United States Court of Appeals

for the Second Circuit

APPENDIX

NO. 76-4278

United States Court of Appeals

FOR THE SECOND CIRCUIT

REA EXPRESS, INC., BANKRUPT,
C. ORVIS SOWERWINE,
TRUSTEE IN BANKRUPTCY,
Petitioner.

v.

UNITED STATES OF AMERICA
and
INTERSTATE COMMERCE COMMISSION,
Respondents.

JOINT APPENDIX

VOLUME II

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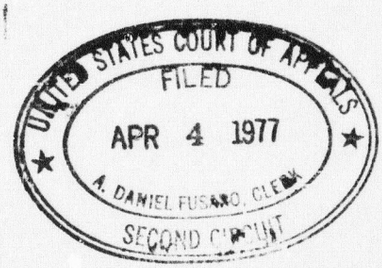

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we be informed of its content and at least be given an opportunity to see it before we commence these hearings.

Judge Beddow. Does ATA have any response?

Mr. Peterman. Your Honor, on May 29, 1968, REA filed its Sub 2314 application, permanent authority for the underlying 2308 temporary authority.

A summary of that authority was published in Federal Register of November 2 , 1968, and particularly since March 3, 1971 when it filed the Sub2337 Temporary authority, which is known as the Emergency Temporary Authority for Irregular Routes,they have not prosecuted 2308 Authority in any way.

I am identifying--what I am reading and referring to, your Honor, is the Petition filed by the American Trucking Associations seeking dismissal of the permanent authority application. This was filed December 1, 1975 before this Commission and the service date--that was served upon the Commission and REA, upon Tom Cole REA Express Inc. 219 East 42nd Street, New York, New York, 10017.

Mr. Cleary: Might I inquire whether or not the response was in fact responsive? The question went to a petition filed in Docket 2345. The proceeding called for hearing today, your Honor. If Mr. Peterman is referring to such a petition, I would like to see it, having been filed in that Docket 2345.

Mr.Streeter. Your Honor, if I may answer. I think

what has happened here is this petition was originally filed in Docket 2314.

The Commission, itself, though has come out with the previous order in which they consolidated 2314 into the 2345 and assigned 2314 as Part No. 181. This was an order served by, I think, Commissioner Murphy some time in December of 1975 or January of 1976.

Mr. Peterman: If I might point out, the Commission's Order served April 8, 1976, Footnote 1, reads -"The Application of REA Express, Inc. in Number MC-66562 Sub No. 2314 was included as Part No. 181 of the proceeding instituted January 8, 1976, in No. MC-66562, Sub number 2345, Consolidated 193 of the applications of REA Express Inc.

Mr. Cleary: But I take it there has been no petition ever filed in Docket 2345 seeking, as the caption in this proceeding called here today indicates, a petition of American Trucking Association, Inc. for dismissal of the application.

Mr. Peterman: Only as I just indicated, your Honor.

Mr. Cleary: Well, our concern, problem, is to know exactly what the Commission in setting this hearing--what was in issue in Docket 2345 that was being brought in issue here, what the scope of the proceedings would be.

We had no notification specifically related to

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Docket 2345. All we had previously been served with was a petition in Docket 2314 which, as I understand, is a proceeding that has been dismissed some time in the past, at leasdt 10 and a half or more months prior to December 1, 1975. That proceeding sub No. 2314, had been dismissed by order of the Commission.

So when the petitions seeking a dismissal of application is filed in a proceeding which has already been dismissed, by order of the Commission, it was difficult to understand exactly what the complainants or the petitioners were seeking.

We have never been served with any document in Docket 2345. So we are absolutely on no specific notice as to what has been raised in issue here, and that is the purpose of my inquiry.

To the scope of this proceeding and whether or not the petitioners, American Trucking Associations, Inc., had filed such a pleading. I am clear now that they never did file such pleading.

Mr. Peterman: I think counsel makes it very clear that he knows exactly what issues are involved here. We filed a petition seeking dismissal of 2314 Application--

Judge Beddow: Well, I believe it is clear now, I do not need further explanation.

Mr. Cleary: Your Honor, I sincerely disagree with counsel's characterization. There are in excess of

2,300 different subdockets under the REA Express, Inc. authority and, for us to be given a pleading in one sub docket and then be told at the hearing by counsel who filed such a document or represents the party who filed it, that we are there obviously on notice as to the issue raised in anyother proceeding the Commission may set for hearing, I do not think is any compliance whatsoever with either the Commission's rules of practice as to specifically noticing parties as to the issues before them and the challenges with which they are faced, or certainly it does not meet the requirements of the Administrative Procedure Act, to say nothing of due process.

I object to counsel indicating that our clients are fully informed when we have never been provided with such a petition.

The Commission's order never set forth the issues in the proceeding and so I do object to it. I object to the proceeding on that ground as not involving properly any such petition in Docket 2345.

Mr. Peterman: I can only refer back to the Commission's order of April 8, 1976 pointing out very, very clearly that this proceeding that had previously been entitled 2314 has now been entitled 2345. The Commission makes a very specific footnote reference to this. They have been clearly put on notice. If we stand here and argue all day long--

Judge Beddow: All right. Are you making any request, Mr. Cleary, or are you just making a statement? Do you have any particular request?

Mr. Cleary: I am making the statement we are not on proper notice as to the scope of the issues called for for hearing today in Docket 2345 are.

We have been provided no proper notice of it.

Judge Beddow: All right.

You have made that statement.

Mr. Cleary: And I object to the proceeding to the extent it deals with issues that supposedly would involve docket 2345 or any alleged petition seeking dismissal for want of prosecution in that proceeding.

Judge Beddow: Objection overruled.

Mr. Redmon: If your Honor please, you have before you a petition for intervention on behalf of ALLTRANS Express, USA, Inc. It would appear it should be ruled on before we get to the merits of this proceeding.

I believe the petition is self-explanatory.

Copies have been served upon all known counsel in the proceeding here this morning.

I do want to point out, however, that the Commission has been totally aware of the proceedings before the Bankruptcy Court in the Southern District of New York beginning in May of 1976. A three-week proceeding before the Honorable Judge Galgay, the Bankruptcy Judge handling the REA

Great Lakes Express, yes.

Q Similarly, with time-DC, did you ever encounter situations where the authorities of that carrier required the observance of a gateway?

A As I recall, yes, they did have some gateway restrictions.

Q In terms of the routing of a particular movement what course was followed with that carrier as to gateway observations?

A We instructed the drivers -- you mean -- well, we instructed the drivers as to what gateways must be met.

Q In your capacity as a REXCO agent did you ever have a points list for REXCO authority?

A No.

Q Did you ever have a guide of routes that were required to be observed?

A No.

Q Did REXCO ever indicate to you any gateways that were required to be observed?

A I don't believe so.

Q You indicated in response to cross examination that on certain occasions your present employer encountered situations in which it does not have quite enough equipment to meet shipper demand on a particular day. Do you remember those questions?

A I recall them, yes.

Q Would you receive a call from their traffic manager, or their dispatch agent, or what?

A Our manager would talk to their lineup man.

Q The lineup man. Would he have the lineup of shipments for the coming week?

A He would generally give us maybe a lineup for three or four days in advance.

Q You would know that within those three or four days he might have the ten-truckload needs that you referred to previously?

A Yes.

Q Would he tell you--would this be at the beginning of a week or maybe on a Friday as to the next week's need?

A Well, I will tell you, I think they talked to us several times a week, and they just tried to stay ahead of themselves "We are going to have this, this and that, the next two or three days."

Q So it would be two or three days in advance to give you notice so that you could see if you could have the equipment available?

A Yes.

Q Shipments of roofing materials for that company now, where were they destined to?

A Seemed like to me a lot went to Kentucky, Tennessee,

same as any general commodity carrier.

Judge Beddow: I will allow questioning in the first two areas, the routes and commodities.

Q (By Mr. Cleary) 12:07 p.m.) With respect to the routes over which RMA Express, Inc. held specific operating authority from the Interstate Commerce Commission, did you review any of those certificates yourself?

A No.

Q The manner in which you instructed the drivers to operate, did you give them some specific instruction as to how to operate?

A Our managers did.

Q The managers that you had that gave those instructions, did you have a written instruction that they were to use?

A No.

Q Would you describe to us the manner in which they were prepared to make that instruction?

A They were supposed to not solicit a run west of Denver, Colorado. That was the first instruction.

The second instructions were that they could run west through the northern part of the United States. That was at a later date.

Q As to the routes to be observed--

A There was none.

Q You gave them no instructions?

A. Yes.

Q. Under what circumstances would you decline such a request?

A. Well, if it were four or five thousand pounds, there was no way we could move 4,000 pounds on a trailer.

Q. When shippers requested service, did you give them an approximate time for the delivery of the shipment?

A. No.

Q. Did they ever request an approximate time?

A. Not usually.

Q. On page two of your statement, you indicate that your duties included preparing trip-leases and other forms necessary to place drivers into the service of the Rexco Division.

Did you say anything to the drivers concerning what route they should take to the destination?

A. No.

Q. Did Mr. Smith indicate that you should say anything?

A. No.

Mr. Nafpliotis: Thank you, Mr. Campbell.

I have no further questions, your Honor.

(2:11 p.m.)

Judge Beddow: I have one question relating to inspections.

Did you perform inspections?

The Witness: I signed the inspections, but I did not perform them.

Judge Beddow: Who did?

The Witness: No one.

Judge Beddow: The time is 2:12.

By Mr. Maser at 2:12.

Mr. Maser: Your Honor, in light of the time frame in which we are working here, I have a number of motions to strike.

Mrs. Campbell, do you prefer Mrs. or Ms.?

The Witness: It does not make any difference? Mrs. is all right.

Mr. Maser: I have a number of statements to portions of her statements that I would like to have stricken, your Honor.

Possibly if we can have you rule on them now, it might speed up matters as far as cross-examination.

I would like to offer them at this point, if that meets with your approval.

Judge Beddow: Fine.

Mr. Maser: The first one on page three, I move to strike the first line of page three, starting with he word "drivers." That sentence through the end of that paragraph.

Additionally, the next paragraph, second line

REXCO Division office handled for you?

A Now, there were some of those that were less than truck load in way, but they took a whole trailer.

Mr. Maser: If I may have a moment, please, Your Honor, just to check.

I believe that is all I have, Your Honor. Thank you, Mrs. Campbell.

Mr. Bryant: Briefly on redirect:

REDIRECT EXAMINATION

Q (By Mr. Bryant) Mrs. Campbell, you discussed on cross examination the inspection of vehicles. Did you discuss the manner in which you were filling out the vehicle inspection forms with John Smith?

A That is where I stated I was just signing my name to them.

Q And Mr. Smith was aware of this?

A Yes, he was.

Q He was aware that you were not inspecting the vehicles?

A Yes.

Q Did Mr. Smith ever inspect vehicles while he was the agent?

A No.

Mr. Bryant: I would move the admission of Appendix 29, Your Honor.

Mr. Maser: With the understanding of my continuing objection of those portions mentioned at the outset.

Judge Beddow: Your continuing objection will be noted.

A. I did not say that.

Q. Did you not say you might have gotten those safety forms in the latter part of September or early October?

A. That is correct, it is possible.

Q. Are you in any way stating that you did not have the safety forms at the time these movements went?

A. I cannot tell you without checking back on notes taken at the time, and I do not have those here.

Q. Perhaps, sir, what is lax is the records that you have here today. Do you have anything specifically that we can rely upon so that we can pin down these dates to determine whether or not there is any su tance to any of the statements or allegations or inferences that there may have been something, perhaps non-compliance with safety, perhaps non-compliance with proper quoting, proper billing, or anything else that might be inferred as improper?

Mr. Sullivan: I object. It is repetitive. It assumes the nature of argumentativeness to the point he is badgering the witness.

Judge Beddow: I will let him answer.

The Witness: I do not have any here with me, no.

Q. (By Mr. Cleary) ARe you making any specific assertions that in fact there were any movements made in violation of the safety regulations?

A. I could say that, yes.

Q. I did not ask you whether you could say it, sir, I am asking you--

A. I will say it.

Q. --whether under oath today in this hearingroom you are making such statements?

A. Yes, I am.

Q. Can you give us specifics, and do you have any specific dates, times, places and what was involved?

A. I do not have specific times and dates but I know one of the moves that went to Detroit was handled by an owner-operator who was on duty in excess of his legal time.

Q. That was one of the loads of granite that you checked.

A. Yes, and he came in to us, when he came in to us he was in excess of his time.

Q. What did you do about that?

A. Told him to take his rest. He was told by Philadelphia, move the load, and he moved it.

Q. Did the driver talk to Philadelphia?

A. Talked to his office.

He was also an agent.

Q. And this is one of the drivers that would have handled one of the three granic loads?

A. Yes.

Q. Was there an inspection report signed at that time when the granite load moved?

A. I do not recall.

Q. Would the inspection report normally be signed before a movement would be made?

A. Yes.

Q. Would part of the responsibility of the agent handling the granite movement be to determine whether or not there was driving time?

A. Yes.

Q. Whether or not the vehicle also was in fit condition, met the safety rules?

A. Right.

Q. Were you that agent?

A. Yes.

Q. Did you sign that document--that inspection report, or did you o.k. that the driver had time to drice?

A. I do not recall whether I did or one of our employees did. I am not sure without checking the document.

Q. Your statement at page three regarding the movement of the building materials, are you stating that in your opinion these items were not properly rated or properly billed or peroperly authorized to be transported?

Mr. Sullivan: Objection, repetitious.

Q Not big enough?

A No.

Q Have you ever worked for a carrier that was big enough and did have special commodity divisions?

A No.

Q Have you ever been an agent for such carriers?

A Yes.

Q You are familiar with the fact that they do set up separate divisions?

A Yes.

Q Now, the authority that they are operating under at that point, is a separate authority from the general commodity or other authority that the rest of the operation is conducted under, is it?

A Not usually.

Q It is the same authority?

A Right.

Q Can you tell me the routes--what were the destinations on the three shipments of granite that you were able to generate?

A I believe it was all Detroit.

Q All to Detroit and came from where?

A From Concord, New Hampshire.

Q Do you know what routes they took?

A I have not the slightest idea.

P R O C E E D I N G S

Judge Beddow: On the record.

Mr. Bryant: Your Honor, at the close of the day yesterday, I gave Mr. Cleary our listing of order of witnesses for today. That will be as follows:

The remaining three agents will be taken, first Mr. Sands, then Mr. Brown, then Mr. Coates. Followed by witnesses Franco, Howard, Zell and Pohlad. It may well be that we will not get to Mr. Zell and Mr. Pohlad but they will be the next witnesses if we get that far today.

Mr. Cleary: Your Honor, I have had an opportunity to review the transcript of the first day of proceedings. Specifically I was concerned regarding the status of the proceeding as a result of my objection and then your ruling relative to whether or not this proceeding involved Docket 2345.

At transcript page 15 I had stated "And I object to the proceeding to the extent it deals with issues that supposedly would involve Docket 2345, or any alleged petition seeking dismissal for want of prosecution in that proceeding."

End of my objection. And you overruled the objection, your Honor.

Now, that is prefatory to my request that we be informed by a ruling from your Honor as to whether or not

this proceeding called here today involves, and if so has there been any notice provided to anyone that it involves the questions of public convenience and necessity in issue in Docket 2345, in any portion thereof, or particularly part 181 thereof and as related to questions does it involve an issue of public convenience and necessity, does it involve issues of the related questions of the fitness, willingness and ability of the applicant REA Express, Inc., as the applicant in 2345, any sub parts thereunder and particularly part 181.

So that we would be informed if it is the scope of this proceeding.

In my view--obviously--it is that it is not an issue. Because of no such notice, I know of no such notice, I know of no such warning, indication, that any such issues of public convenience and necessity are involved. All we have ever been told about was that there was a petition of American Trucking Associations, Inc. for dismissal of the application which is on the assumption that the Sub 2314 Petition was relabeled by the Commission and put into this proceeding, it at most raised issues as to lack of prosecution, want of prosecution and moved for dismissal on that ground, but did not raise issues as to whether or not this was the proceeding for a full public convenience and necessity proof with related fit, willing and able proof that would accompany it.

Judge Beddow: Does ATA have comment?

Mr. Peterman: I would make the comment that it is ATA's position that this authority has been outstanding for over eight years. It has never been prosecuted. It is complainants' position that the defendants have repudiated this thing. What we are requesting based on what we allege to be blatant illegal operations that the Commission take a look at this authority and find REA unfit to hold this authority, for two reasons.

They are unfit because of the conduct of the REXCO operation.

And, two, the fact that they have not prosecuted this authority for at least eight years.

Mr. Cain: Your Honor, just briefly: I had the same position, I have the same position as Mr. Cleary does, or my client has the position, the intervenor. I take it the answer to the question then is "No, we are not trying the case on its merits, is that correct?" Is that correct.

Mr.Streeter: If I may respond . It is not a case of trying the case on the merits. We definitely intend to try the case on the merits. It is not to try to attempt a PCN case, it is a complaint case and also a petition to cancel.

I think, if you go back to the Great Lakes Airlines, Inc. versus CAB case, found at 294 F2D2171967, Cert. United

366 US 965, the Court there held that the provisions of Section 558 of the Administrative Procedure Act do not apply to temporary authorities.

Therefore, the notice requirements that are normally required in the absence of a showing of wilfulness or whether the public health, interest or safety is involved is not involved in this proceeding. It is a temporary application, it is a temporary authority and therefore if we can show that it has not been prosecuted, that the applicant is unfit both financially and operationally, the whole matter can be canceled. It does not depend at all upon a showing or non-showing of PC and N.

Mr. Peterman: I would point out the Commission recently decided Associated Transport, Inc. Extension TVA Power Plant 125 MCC 69, 1976, cited at page 60 of Complainant's argument. That case clearly held the carrier was bankrupt and therefore unfit to hold the authority. We would suggest that that case is directly in point and should be controlling on the issues here.

Mr. Sullivan: May I finally suggest to your Honor as an evidentiary matter in this thing that a ruling with regard to PC and N should be carefully approached because it may result in circumscribing our evidence and I would point directly to diversion, which will be an element put in through my client. This diversion we are alleging

is relevant in this particular proceeding from my complainant's standpoint because of the status of the Rexco operation.

Mr. Bryant; I would join in those remarks.

Mr. Cleary: I take it Mr. Sullivan was addressing himself to the complaint proceedings?

Mr. Sullivan: If your Honor please, these are on a common record, and a ruling with regard to what Mr. Cleary is requesting may overlap or wash over into the issues which are very relevant in the complaint proceeding and I am only requesting that when your Honor rules that the ruling specifically accept our ability as a complainant, Schneider Transport, to introduce the evidence of diversion, evidence of how the operation of Rexco has affected its operations.

Mr. Cleary: Your Honor, I think what is clear is that now the complainants and the petitioners are trying to use argument of counsel presented at 9:30 a.m. on September 1, 1976 to define the issues that they think are in the case. My request is for a ruling from the bench and I specifically ask for some indication of notice if it should be the ruling that this does involve a full PC&N proceeding, some indication of what if any notice has been provided to any party,including the applicant in the sub 2345 and particularly insofar as part 181 was involved.

It is my view that this case cannot in any proper way

be construed as involving such issues.

Mr. Sullivan: I would suggest that would be a perfect argument for brief, or a legal argument. The issues have been defined, the matters have been set for hearing, and we are ready to go forward this morning.

I think the request is premature.

Mr. Cleary: Your Honor, there is one point Mr. Sullivan just raises, that he thinks we can argue this on brief. I am deeply concerned. I represent a trustee in bankruptcy in this proceeding.

If we are to have to present evidence in this proceeding related to any and all issues which the complainants may wish to brief as to whether or not they may ultimately be decided as relevant or irrelevant to what was properly called, or whether they were properly raised in issue, we are faced with a burden of risking either presenting a full PC&N case or choosing, Well, we may witn the legal argument somewhere 'way down the line that it was not in issue, and therefore we are put on the Hobson's choice of not putting such evidence in, and hoping we win on that legal issue and if 'way down the line by some decision of the Commission or some reviewing court it is decided "No, it was an issue and we waived our rights by not presenting that evidence," we are in a very difficult position. The trustee must decide

on advice of counsel what can be done.

Now, the trustee's problem is the expense entailed in the presentation of a full PC&N case at this point in time, if, in fact, it is the ruling that it is called.

One of the things the trustee would have to do would be get authority to spend any additional funds for that additional activity and have to go on to the bankruptcy court.

I am saying that without full knowledge of all the procedures of the bankruptcy court, because I am not fully apprised of them, and I am not fully cognizant of all thelegal ramifications, I do not claim any expertise in this area, but that is the problem I see.

So this is a very serious thing we are facing, to determine what is the issue here and what are we required to do, and that is why I come back to the basic question of have we ever been given any notice that this is a PC&N case, have we ever been notified that that is the issue in this proceeding and what opportunity have we been afforded to present the evidence that would be able to be submitted to support a full PC&N case.

Judge Beddow: I would say that certainly insofar as the 2314 or 2345 proceeding, the issue on the merits of PC&N or fitness, are not involved. The issues must be limited strictly to those that are raised in the petition.

I will review that at a later time and withhold any ruling or comment until I have done that.

Mr. Sullivan: May I proceed with my first witness, your Honor?

Judge Beddow: Yes.

Mr. Sullivan: Call Mr. Sands.

Mr. Bryant: Your Honor, may I be excused from the hearing room during Mr. Sands' testimony?

Judge Beddow: All right.

Thereupon

JOHN SANDS

a witness, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Sullivan) Mr. Sands, state your name and business address for the record.

A John Sands; Post Office Box 374, Pawtucket, Rhode Island.

Q By whom are you employed and in what capacity?

A I am a partner in Paul's Traffic Agency.?

Q Mr. Sands, I show you what has been marked for identification as Exhibit No. 1, Appendix 7, is this the statement you wish to sponsor under oath here today with one correction?

A Yes, I do.

Q I draw your attention to page two, the last

for the transportation of wire or machinery parts?

Mr. Cleary: Objection.

I do not think the witness has been qualified to determine why the shipper would request any particular type of equipment.

A (By Mr. Nafpliotis) Did the shipper indicate to you why he requested flatbed equipment for the transportation of these commodities?

A Yes, he did.

Q Could you tell me, please, what he indicated to you.

A That the destination where he unloaded this did not have a dock and he wanted to unload with a forklift from the side.

Q In your opinion could these commodities have been safely transported in ordinary van-type equipment?

A Yes.

Q Did the shippers--when the shippers requested service, did you give them an approximate time at which they could expect delivery?

A Yes.

Q After a shipment was accepted for movement, did you instruct the driver as to the route he should take to the destination?

A No, I did not.

Q Did you exercise any control over the driver

A If a shipment takes up a cube capacity of I believe 2,000 feet, it would be classified as atruckload.

Q Among the shippers that you were transporting iron and steel articles for, was there any one or two that accounted for the bulk of the traffic?

A Oh, yes.

Q Recalling those individual shippers, how would you be notified by them, if you were so notified that they would have some traffic for you?

A By telephone.

Q Would they call on a Monday or perhaps the previous Friday to indicate what they would need on a Monday or Tuesday, or how would they tell you?

A One shipper calls us at 3 o'clock in the afternoon for what he is going to ship the next day.

The other shipper calls at 4:45, right on the dot every night, for what he is going to ship the next day.

We are very unfortunate not to get any more warning than that, but that is it.

Q That is part of the trucking business, sometimes you get a lot of advance warning and sometimes you do not, right?

A Right.

Q From your understanding, would that be pretty much

or ten thousand with a partial trailer and he didn't want to mark the bill one truck load so we could bill him for the 24,000 minimum, I would say we turned down a few.

Mr. Cleary: I couldn't hear that at all. May I have it reread?

(Answer read)

Q (By Mr. Nafpliotis) Did you ever decline a request for service because of the shipment being a short haul movement?

A Yes sir.

Q How often did that happen?

A Very seldom. Just like it was Toledo, or Cleveland, or something less than the 300 mile radius which our tariff read and the customer would wonder if he can get it moved for 52 cents to Cincinnati, he don't want to pay 64 cents with REXCO. On account of the mileage, it is about 260 miles and we had a 300 mile radius. That is the reason for turning down the short haul shipments because we had a 300 mile minimum.

Mr. Cleary: I missed the end of that. Because of what?

(Record read)

Q (By Mr. Nafpliotis) After a shipment was accepted for movement did you instruct the driver as to the route he should take to the destination?

A No sir. Only on occasion. May I explain?

Q Yes sir.

A Unless the load went into Texas or Oklahoma, which the

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truck must be routed through Missouri because Arkansas was not recognizing REXCO's authority through Arkansas, and we were getting fines, and according to Mr. Don Williams' orders "you will route the loads through Missouri and stay out of Arkansas"

Q Apart from what you just explained, did you exercise any control over the driver once he left the agency station?

A Every driver is instructed that if you broke down or was unduly delayed on the trip, that our telephone number was given to him for him to call us, if he had any problems and needed money we could call Philadelphia and get an okay to wire him money in case of breakdown.

Q Suppose the movement was going all right, there were no breakdowns. Did you require that he call in to you to let you know where he was at a given time?

A No sir.

Q Did your operations as a REXCO agent comprehend a defined territorial area?

Mr. Bryant: May we ask for clarification. You are talking origin?

Q (By Mr. Nafpliotis) The origin area.

A The origin area?

Q Yes sir.

A I believe that in my talk with Mr. Williams, that any point within a reasonable distance of Detroit that I solicited the freight from, and could furnish equipment for, I could ship.

to refrigerated division.

In the case of Time D.C. and Rydex they did have a reefer division, in which they did handle hot and cold, and which we were allowed to handle if we solicited the freight. So it would be a yes or no proposition, that is why I wanted to explain.

Q Taking the instances where the answer was yes, the carrier would handle, I take it you say it would handle it through a reefer division. You would solicit the traffic, book the transportation, but the actual transportation would be handled by a reefer division, which was separate from the Special Commodity Division?

A No, they were together.

Q The Special Commodity Division had within it a division that would handle reefers.

A Yes, sir, we were allowed to use reefers.

Q Would you handle traffic in a special commodity division that would go to what might be generally termed a private residence or a camp.

Mr. Bryant: What is the last word?

Mr. Cleary: Camp, c-a-m-p.

The Witness: I believe that our instructions were, from every company that I have ever hauled, including Rexoo, you do not haul for private individuals.

Q (By Mr. Cleary) And the--

A It is bad finance policy.

Q Pardon?

A It is a bad finance policy to haul for private individuals.

Q Are there any instances in working with a special commodity division where they would not handle anything the carrier could handle as a general commodity in its general freight division?

A I am afraid you will have to repeat that.

(Question read.)

The Witness: Well, generally we are working as commissioned agents, and generally speaking any freight that was over 5,000 pounds, although it could be hauled by general commodities, we didnot give them the freight, because we kept it on account of the commission available as to the merchandise we were hauling.

In other words, if the shipment was of such a small nature that we were not allowed to haul it, it was given to general commodities. Otherwise, of course, we stole all we could.

Q Looking at the Special Commodity Division, other than the size of the shipment, let us talk about what would be considered a volume or truckload move. I think you have indicated, to double check this, you were not to transport in the Special Commodity Division for most of these companies, or maybe at least for some, anything that

sold (stole in notes)

Q (By Mr. Cleary) I was concerned about the use of your word "we" in your response relative to the billing error. But the "we" was your billing error?

A I made the mistake in billing, and "we" was Mr. Williams and I corrected the matter to the customer's satisfaction.

Q Now, the synthetic motor oil products, what kind of a specific schedule had you been told about for the movement of those products?

A We were given one to two days' notice, and times for pick up.

Q And what?

A And specific times for pick up.

Q So they would give you -- on that occasion would they give you at least an idea that you needed a total number of loads, maybe they wouldn't know which destination, for as many as three or four days in advance?

A Yes, three to four days they called in advance "like I got two loads for Kansas City for Thursday at 9:00 o'clock at night", and this was a Monday.

Q And that was their request for a schedule?

A That is right.

Q Would you meet that schedule?

A I met it for the first two loads. And then I couldn't handle it any more. I couldn't meet their schedules, so rather than have the customer mad at me I call him and told him, I

moved in truckload lots in van type equipment. Is that to say that all the traffic arranged by you moved in ordinary van type equipment?

A. For REXCO, yes, sir.

Q. Did you ever decline a request for service because of the commodity involved?

A. No, sir.

Q. Because of the volume of the shipment?

A. Not to my knowledge, sir.

Q. Because of the shipments being short-haul movement?

A. Not to my knowledge, sir.

Q. When shippers requested service did you give them an approximate time at which they could expect delivery of the shipment?

A. No, sir.

Q. Did they ask you?

A. Not many of them. Not to my knowledge did any of them ask me when it would be delivered.

Q. After a shipment was accepted for movement, did you instruct the drivers as to the route he should take to the destination?

A. No, sir.

Q. Did you exercise any control over the driver once he left the agency station?

A. No, sir.

RG

maybe in the special commodity division you could not serve that point in truckload?

A. Not to my knowledge, no, sir.

Q. In order to have an expedited service on truckload traffic, is it your concept that it must wait for some subsequently predetermined--or a subsequent time which has been predetermined at some time in the past in order to permit the traffic to move? That is a little mixed up, is it not?

A. Run that by me again. I did not catch that.

Q. I am trying to be short.

I am trying to zero in on your concept of scheduled service. What do you mean by scheduled service?

A. What do I mean by scheduled service?

Q. Yes.

A. I would say that you tell somebody that it is supposed to be there at a certain time or you have a time set for the truck to leave, and that is when it leaves.

Q. Were you able to tell your customers that you would have a truck there at a time they asked you to have it there?

Mr. Bryant: Objection, are we talking about Rexco, Branch?

Mr Cleary: Yes, In your operations for [illegible]

A. Was I able to--some times.

Mr. Peterman: Well, I think basically -- Excuse me Your Honor.

Judge Beddow: I would like to concentrate the service aspects -- and this was the intention in my statement before, in relation to recognizing the diversion of freight, this is in relation to the REXCO operation rather than in relation to any general small package operation, or small shipment operation. I don't believe I want to get into details on the ability of the complaining carriers to meet all small shipment problems.

I realize there is certain testimony as to what was done at the time PIA went bankrupt and stopped offering any small shipment service. I will receive some general evidence as to what the complaintants, or the motor carrer industry did at that time, but I don't think it is necessary to go into the aspects of public convenience and necessity, and the ability of the comm carriers to meet that need.

We are not going to try the Hub application, we are not going to try APCAN application.

Mr. Sullivan: If I can speak to that, that is in accord with my prior objections to Mr. Cleary's attempts to obtain a ruling from you and I am in accord with your ruling. My incline is such, Your Honor, though I cannot speak for these other gentlemen.

Judge Beddow: At this time we will recess until

A Should he request it, yes, it is.

Mr. Sullivan: I offer the witness at this time.

Mr. Cleary: Your Honor, I would like to make an objection, which I have had reduced to writing. I would give the original to the reporter. It has been signed.

Your Honor, I object to the admissibility of the type of evidence being offered by Mr. DuJardin, and I move to strike not only the document which has been identified as Appendix 44 to Exhibit 1, but also the additional direct testimony this morning, on the grounds as stated in this written form of objection.

I urgently move that these objections be recognized, and ruled upon favorably, so that we can avoid unnecessarily prolonging this hearing by cross examination on a subject matter that we believe to be totally irrelevant, and would result, if we have to go into cross examination and the matter is to be remaining on the record, would impose an unconscionable burden upon the trustee to prepare responsive evidence to it.

The document speaks for itself, and I press my objections.

Mr. Sullivan: Your Honor, here is a seven-page document -- nine pages. I am ready to answer. We argued this thing about half an hour yesterday, but I will at this time request through Your Honor to ask

Mr. Cleary to point out to me where I have injected the issue of public need for REA service into this statement, public convenience and necessity is, has been or will be served by the full scope of operations of REA Express, and the motor carrier's alleged fitness and willingness to transport the traffic handled by REA Express, Inc., on page 6, and then I will specifically direct my reply within the content of my complaint.

I will preface that by saying my complainant is here to stop the REXCO operation. If REA Express, Inc., wants to go out and handle express traffic, more power to them, and I sure hope the trustee succeeds in doing that. I don't believe we have ejected that issue through Appendix 44 in any manner. But if Mr. Cleary can point it out, I will argue myself specifically to that point.

Mr. Peterman: For the record, Your Honor, one more time, so Mr. Cleary is absolutely certain what ATA's interest in this thing is, he points out on page 4 of his objection, I guess this is an objection, that he has never been served with or supplied any petition of ATA, etc., indicating the docket number, or Sub No. 2345.

Just so Mr. Cleary is absolutely certain what I am

talking about, on January 9, 1975, the Commission included Docket No. -- excuse me, Sub No. 2315 -- I am probably getting the wrong page here. 2314 of MC-66562, and included it, and it made it a part of, as Part 181, Sub No. 2345, when the Commission consolidated all REA temporary authorities into Sub 2345.

We have said this five times. I really cannot understand why we continue to go over this. It is very clear. It is still in the record. Mr. Cleary was served, I believe, with a copy. In fact I believe I have a memorandum from Mr. Cleary, if I can find it, requesting that ATA supply him with a copy of the ATA petition. "Memorandum to the file, John Cleary, Esq., called and requested copy of ATA petition to cancel TA and dismiss PA applications of REA Express. He has been retained by the trustee to work with Whitman and Ransom.

"Copies sent John Cleary, Esq., Donald Cleary and Caldwell, 914 Washington Building, 1435 G Street, N. W., Washington, D. C. Telephone number 7831215, memorandum dated December 17, 1975."

Mr. Cleary: I think it extremely important I be afforded the opportunity to respond to what I consider eloquent presentation by counsel for the American Trucking Association, Mr. Peterman.

There is no doubt whatsoever that I received a petition, as apparently outlined in Mr. Peterman's memorandum, that was in Docket 2314.

I respond now particularly to Mr. Sullivan's statement:

Mr. Sullivan has indicated, I believe, and I am very cautious about purporting to even attempt to summarize or refer to what counsel says on the record, but I understand it is his position that his company, and this witness, would be glad to have the trustee and REA Express, Inc., continue in operation.

I personally can interpret that statement only as being a specific statement by Mr. Sullivan that his client, Schneider Transportation Company, and presumably its witness Mr. DuJardin, offer the testimony in evidence in this proceeding only insofar as it relates to Schneider Transport, Inc., complaint in Docket No. MC-C-886 -- well, perhaps we need clarification. Mr. Schneider's -- the Schneider Transportation statement at the top of the first page has a number 886. I don't know what docket that is.

Mr. Streeter: 64.

Mr. Cleary: Is it 64?

The first number I guess should be 8862, is that correct?

Mr Sullivan: I apologize for the typographical error.

Mr. Cleary: Well, maybe clarification will be provided by counsel. It is apparent at least that the statement is offered in 8864, the complaint proceeding, in which Schneider Motor Transport, Inc., is the sole complainant.

It appears quite clear and specific that the witness is not offering this testimony as in any way relevant to, or related to the request of the -- or the petition contained -- or the request contained within the petition of the American Trucking Association, Inc., either for cancellation of the temporary authority or for a dismissal of the permanent authority applications, whatever those applications may be that have been brought in issue here as being required to be dismissed for lack of prosecution.

So I think the relevance of the testimony clearly is narrowed only, if it is relevant at all, only to the complant proceedings.

If Mr. Sullivan is now purporting to modify that position, I think we are entitled to have it on the record here so that we know what the relevance of this evidence is.

Mr. Sullivan: Judge, I don't even understand that.

I represent this gentleman on the stand, I was retained by this gentleman, and we filed a complaint. The issues are very clear. I don't think that Mr. Cleary comprehends that. I had to argue that again yesterday.

There is not anything in this statement that is not relevant and very material to our showing that we want REA Express, Inc., to quit conducting illegal operations through its RAYCO Division. If it wants to go out and haul express, more power to them. And I am being paid by this gentleman on the stand, and this statement is relevant.

Again I would direct Mr. Cleary to show me one place in here this is not relevant to the issues I have raised.

Judge Beddow: Thank you, we will recess until 11:00.

(Recess.)

Judge Beddow: On the record.

I had indicated earlier that I would defer my comment, or ruling on the issues relating to the temporary authority matter. Inasmuch as this other motion has come up, I guess this would be an appropriate time to respond.

As far as the Commission is concerned, fitness is always an issue that the Commission itself may

recognize.

As far as the matter of whether there is an immediate and urgent present public need for express service, under the so-called HUB system, I will not consider that to be an issue in this embraced proceeding.

The operational ability of Railway Express, or REA, presently to meet an immediate and urgent need for an express service under the so-called HUB system, cannot be divorced as an issue here, but I believe that it is an issue that is not contested. The replies to the complaint for one thing admit the status of REA as bankrupt, and non-operating company, at least as far as the provision of express service of the type that was described in the temporary authority application.

So this has to remain as an issue.

Referring to the objection and motion to strike, I believe it has been agreed that the issue of public convenience and necessity is not an issue in this proceeding, any one of these proceedings.

With respect to the introduction of motor carrier testimony, which is comprised of general evidence by the complainant carriers as to their operating authority and ability, goes to their status rather than their ability to adequately serve the shipping public in a manner such that no competitive service should be

authorized, as would be the issue in an application proceeding.

There is no reason why this generalized evidence indicating their status should not be admissible, but this information is not a matter -- not considered here to be a matter of overriding materiality, and is not really considered to be a matter of dispute.

These carriers have indicated generally their operating authority, their equipment, a brief description of the services they perform, or their revenues, but this is the type of information that is submitted to the Commission, it is not a matter of dispute that goes to any of the important issues in this case.

I don't think there is any major dispute as to its accuracy or credibility, such that any serious cross examination, or response, is necessary.

Therefore, the admission of this generalized statement, which is often quite similar to that actually just put in as part of a protest, there is nothing there that should unduly prolong this hearing.

The evidence will be considered, but only insofar as it goes to the carrier's status as a complainant. It is not going in to show that they have the willingness to meet any and all transportation needs such that no other carrier should be authorized now -- or in particular

REA Express or its successor should not be authorized in an appropriate proceeding to either transfer or obtain other authority.

Under those limitations, the objection and motion to strike will otherwise be overruled.

Mr. Cleary: Your Honor, my written document containing the objections that you have just ruled upon related to the overall admissibility of this type of testimony.

Now, I would like to concentrate motions to strike what I believe is a portion of testimony that is of somewhat different character. Perhaps it is not. But I move to strike the testimony beginning on page 10, starting with the third full paragraph, the sentence starting "In May of 1965 Schneider published a special commodity rate from Attleboro, Massachusetts," and continuing on down through to the end of the testimony on page 14.

I encompass within that objection and motion to strike the additional testimony elicited here today, all within this same general subject matter of diversion, and then the subject matter subsidiary to that diversion argument I believe for the related rate discussion.

I believe, first of all, this proceeding does not involve any issue as to the lawfulness of any rates, the

E-2

Interstate Commerce Commission
Washington, D.C. 20423

I, H. GORDON HOMME, JR., Acting Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the attached is a true copy of the Application For Temporary Authority, received April 9, 1968, in Docket No.-MC-66562 (Sub No.-2308 TA), Railway Express Agency, Inc., New York, New York, the original of which is now on file and of record in the office of said Commission.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the Seal of said Commission this 26th day of August, A.D., 1976.

H. Gordon Homme, Jr.

ACTING SECRETARY OF THE INTERSTATE COMMERCE COMMISSION

22

INTERSTATE COMMERCE COMMISSION

BUREAU OF OPERATIONS AND COMPLIANCE

NOTICE OF FILING OF TEMPORARY AUTHORITY APPLICATION

To: Certificates and Captions Unit
Office of Proceedings

Filed: 4-[illegible] THE INSTITUT
(To be completed in Washington) [illegible] 40 - 9
[illegible] 102 4/5/68
A-Chiusano/m.c.

No. MC- 66562 Sub-2308 (Sub-No.)

Applicant: Railway Express Agency, Inc.
Address: 219 East 42nd Street
New York, New York 10017

(Name and address as above)

Applicant's Representative: John C. Ashton, Vice-President and General Counsel
Address: Railway Express Agency, Inc.
219 East 42nd Street
New York, N.Y. 10017

Authority sought to operate as a [X] COMMON [ ] CONTRACT carrier, by motor vehicle, over [X] REGULAR [ ] IRREGULAR routes, as follows: *(Describe commodities to be transported, points from, to, or between which service proposed, and if over regular routes identify highways to be used.)*

General commodities moving in express service as a common carrier over regular routes as set forth in the attached BOR 95.

RECEIVED
APR 9 1968
STATUS BRANCH
RECORDS & SERVICE - INTERSTATE COMMERCE COMMISSION

For *(Days duration)*: 150

Name and address of supporting shipper(s):
36 shippers' supporting statements are attached.

RECEIVED
APR 8 1968
RECORDS & SERVICE
MAIL BRANCH

Send protests to: *(Name and address of B.O.C. Field Representative)*
Anthony Chiusano, District Supervisor
ICC, Bureau of Operations
346 Broadway
New York, New York 10013

RECEIVED
APR 9 1968
STATUS BRANCH
RECORDS & SERVICE - B

cc: Office of Motor Carrier Safety
Federal Highway Administration
Washington, D.C. 20591

BOC FIELD NO. 22
(6-65)

366

INTERSTATE COMMERCE COMMISSION

Bureau of Operating Rights

No. 30232

APPLICATION FOR TEMPORARY AUTHORITY

Date APR 9 1968

Fee $ 10.00

ICC Washington, D. C.

RAILWAY EXPRESS AGENCY, INCORPORATED
(Name of Applicant)

Principal Office 219 East 42nd Street, New York, New York 10017

requests temporary authority for 150 days to transport general commodities, moving in express service as a common carrier by motor vehicle in interstate or foreign commerce over the regular routes and between the points described in the attached Exhibits.

In support of this request applicant states:

1. It now holds emergency temporary authority for the service here proposed, authorized by the Commission by order dated April 3, 1968 in Docket No. MC-66562, R-452 over a period of thirty (30) days expiring May 3, 1968.

2. It is now operating as an interstate motor carrier under a certificate, Docket No. MC-66562 and subs thereunder.

3. It does not control, is not controlled by, nor is it under common control with any other carrier except as indicated in Railway Express Agency, Incorporated-Determination of Status, 21 M.C.C. 161.

4. It does not have pending an application for permanent authority to perform the same service as proposed herein.

5. It does intend to apply for corresponding permanent authority within 60 days from April 3, 1968.

6. Except as above stated, it has not previously made application, on which final action has been taken, for authority to perform the same service, in whole or in part, as that here proposed.

7. It previously has not opposed any other carrier's application for authority to perform the service here proposed and does not have knowledge of any such application.

8. It does intend to tack the authority here applied for to other authority held by it under MC-66562 and subs thereunder.

RECEIVED

APR 9 1968

STATUS BRANCH 367
RECORDS & SERVICE

9. It attaches to each copy of this application maps showing the routes and points to be served.

10. It attaches letters indicating shipper support, with detailed information as follows:

(a) Accurate description of commodity, quantity and frequency of shipments to move, and consequences of denial of this application.

(b) Statement that there is not any carrier service available (rail or motor), either single line or by interline, between the points involved.

(c) Shippers have not supported a prior application by applicant herein or any other person seeking authority to perform the service here proposed.

Applicant further states that:

11. It is aware that a grant of the authority here requested will create no presumption that corresponding permanent authority will hereafter be granted.

12. If the authority here requested is granted applicant will comply with the tariff requirements of the Interstate Commerce Act before beginning operation and will fill out and forward to the Commission one copy of Form BMC 3 (Designation of Agents), and will mail a copy to the State Board of each State involved, except in instances where such filings already have been made.

13. It does desire telegraphic notice, collect, of the action taken on this application.

Date: April 4, 1968

Signature _____
W. J. Taylor
President

Please send correspondence to:

John C. Ashton
Vice President and General Counsel
Railway Express Agency, Incorporated
219 East 42nd Street
New York, New York 10017
Telephone: (212) 557-8800

Statement of Facts

R E A traditionally has depended for its line haul operations on the passenger trains of the nation's railroads. Where the railroads have been forced to discontinue or curtail passenger service, it has been necessary for R E A to provide its own line haul operations by motor vehicle. This line haul motor carrier service is operated primarily by R E A, with its own vehicles under certificates issued by the Interstate Commerce Commission. In almost all cases these certificates authorize operations over routes paralleling the rail route where passenger train service has been curtailed or discontinued. As a result, present R E A operations, by rail or motor, extend between traditional rail points without regard to the need for direct routing between production points and marketing areas.

The range of commodities handled by R E A in its express service includes a multitude of items not customarily handled by most other transportation agencies, such as corpses, blood, valuables, live animals, etc. R E A offers the only practical method of moving most of these commodities. But in addition to the traffic which no one else even purports to handle, by far the largest percentage of R E A's business can be characterized as consisting of the more usual commodities handled by other carriers. Indeed, except for the Post Office Department, R E A may properly be described as the only nationwide small shipment

specialist. Unlike almost any other carrier, R E A considers that its primary task and function is to maintain and operate its transportation plant for the maximum accomodation of small shipments, no matter what their characteristics. No other nationwide transportation company is devoted to this single purpose.

As indication of R E A's unique niche in the transportation industry, its average weight per piece handled is 36 pounds, its average shipment weighs 72 pounds. Less than truckload shipments (up to 10,000 pounds) carried by Class I motor carriers of general commodities average 591.1 pounds. Sixty-one freight forwarders with annual revenues of $100,000.00 or more handle shipments averaging 510 pounds. These figures clearly indicate not only the importance of R E A's role as a small shipment carrier, but the importance of small shipments to R E A.

The present and continuing crisis in the small shipment area dictates that R E A must not only continue its operations but must eliminate service delays and inefficiencies that adversely affect its ability to meet the needs of the shipping public in this area.

R E A now faces a critical emergency which has gradually been brought about by the circuity, inefficiency and increasing inadequacy of this traditional pattern of line haul transportation. It has experienced a substantial diversion of traffic due to

deteriorating service that is directly the result of curtailed rail passenger service. On many of its major remaining rail routes there is only one service per day in lieu of the three or four formerly available. Movements going through one, two, or more transfer points have become fragmented causing long delays at each transfer point. This has added 24 or more hours to intransit time. The situation is extremely serious and cannot be corrected except by a thorough-going revision of R E A's operations and operating schedules. Failure to take some immediate realistic positive action will result in a complete breakdown of R E A's service and the attendant loss of its unique services to the small shipment public.

The extent to which it has been necessary for the railroads to discontinue passenger train service as a result of the changed travelling habits of the public is well known to the Commission. According to the March-April 1968 issue of "Postal Life" (The Post Office Department employee publication), the number of mail carrying passenger trains in operation in the 1930's amounted to approximately 10,000. By 1956 this number had been reduced to 2,600. In 1967 there were only 741. According to other data available to R E A, passenger train miles declined from 355,128,000 in 1951 to 164,264,000 in 1966. As passenger train services declined, R E A's motor vehicle operations necessarily increased. There is no other way to continue

to provide the small shipment public with nationwide express service. As has been stated, the authorities that have been thus obtained generally follow the circuitous rail rights-of-way rather than the nation's more direct highway system, the routes of which have been dictated by the modern flow of commerce.

The seriousness of the situation is now greatly increased by the recent policy of the U. S. Post Office Department to remove first-class mail from rail passenger trains. This has accelerated the discontinuance of passenger trains that have traditionally handled express and left R E A to seek other means for the handling of its traffic.

In addition, R E A has been notified by some railroads (and is advised that others will follow this pattern) that they will discontinue their joint agency arrangements with R E A whereby the railroad and R E A have shared the expense of maintaining local representation at many points. To continue express service at these communities with a cost-revenue relationship that will permit continuance of express service R E A must drastically revise its method of servicing these points or remove service at the expense of the shipping public.

The result of the present inefficient operation has been reflected in a substantial diversion of shipments. This, in turn, has placed R E A in a precarious financial situation of

such proportion that it constitutes a present emergency. In the July 1, 1965-June 30, 1966 fiscal year, R E A operated at a deficit of $5.6 million. In the current fiscal year, July 1, 1967-June 30, 1968, the trend of losses has continued and to some extent accellerated. It is certain that unless R E A makes a drastic rearrangement of its operating practices such as here contemplated, this deficit will continue and probably grow. In addition to increasing costs of every kind R E A will be required to bear an increase in its payroll tax to provide greater railroad retirement benefits. This increase is expected to amount to $4 million annually and add further to the financial problem that besets the company.

The accumulating adverse conditions have reached a point where the situation must be corrected or the public will necessarily be required to continue to have inadequate express service which does not meet the needs and requirements of their express traffic. At the same time, due to the increasing burdensome costs and expenses in maintaining the existing inadequate express service, it has become apparent that the public will, in the face of R E A's demise, have within a short time no express service whatsoever. The service proposed by R E A has specifically been designed to set up a pattern of operation which will afford adequate express service at a cost which will enable R E A to continue in business. It will eliminate the severe delays and other diffi-

culties which the public has been required to sustain with regard to their express traffic, and will provide an adequate express service of the type which the public has always had available and to which it is entitled. The system proposed is specifically designed to afford for the first time a transportation system solely for the purpose of meeting the needs and requirements of the express traffic, and will replace the patterns which grew up over the years with the discontinuances of train service, and which were developed without regard for adequate express service.

The circumstances with which the public is now faced have given rise to a need and requirement for adequate transportation for their express shipments which is both immediate and urgent and which can only be met by the inauguration of the proposed service. The inability to inaugurate that service will force the public to continue to have such inadequate service as can be furnished by R E A under the present conditions, and it will only be a question of time when it will no longer have available to it express service of even the type presently afforded. As indicated by the Commission in the Nashua case, the inability of the public to have available to it adequate express service as well as adequate service to other forms of transportation would be contrary to the public interest.

R E A emphasizes that the granting of the authority

herein sought will not result in the entry of R E A express service into areas it has not previously served. R E A will be enabled to provide to the public an improved express service for small shipments.

R E A has studied its operations and is convinced that its only solution is to revise its line haul transportation methods by the inauguration of what it ter s "the Hub System". The need is urgent.

The Hub System

R E A has selected 24 major cities within the United States that will be its major points for dispatch and receipt of its small shipment traffic. These points (or areas) generally follow the production areas as outlined by the Census of Transportation as conducted by the Bureau of Census. Each one of these points will be connected with each of the others by a line haul route either by rail or by motor or a combination of both. If by motor, it will be over existing I.C.C. authorized routes or by new routes upon issuance of the necessary I.C.C. authority herein requested. This "Hub-to-Hub" movement is referred to by R E A as the "Primary System". It is contemplated that each "Hub" city will serve a "Hub" area by a secondary system that will operate over line haul routes that radiate to "satellite" points in the "Hub" area. These operations will be primarily by motor under existing I.C.C. certificates or new authorities where necessary.

R E A, under its present fragmented line haul system requiring multiple transfers, has experienced an alarmingly high number of misroutes, split deliveries and lost shipments. The HUB System -- coupled with R E A's planned use of the Postal Department Zip Code routing system -- should all but completely cure the problem.

In no instance will these new operating arrangements extend R E A's service to new marketing areas not already served by R E A under its present operating system.

The proposed new operating system is illustrated by the maps attached:

1. One map shows the "primary system" of routes between the 24 "Hubs".

2. The 24 others show the "secondary system" of line haul routes from each of the "Hub" cities to "satellite" points within the "Hub" areas.

The advantages flowing to the small shipment public from the establishment of these planned operations will be substantial. After lengthy consideration of the myriad of details involved, R E A has determined that:

1) Multiple transfers will be eliminated.

2) The number of damaged or lost shipments will be reduced.

3) The number of "split" deliveries will be reduced.

4) Tracing of shipments will be simplified.

5) Delays in transit will be reduced, and

6) Overall costs will be reduced.

These advantages add up not only to an effective means of halting abruptly diversions of traffic away from R E A, but to an improved operation that will offer to the small shipment public the service so critically needed.

The present posture in which R E A finds itself is the most perilous of its existence. It has attempted various solutions over the years in an effort to get permanently out of the financial doldrums. It has used every innovation in its operations. The imagination and determination of its management has often enabled it "by pulling itself up by its own bootstraps" to continue its operations in the face of adversity. Throughout these times the great majority of the small shipment public has remained steadfastly loyal. This loyality is now strained to the breaking point. R E A feels it now has found the only permanent solution. If empowered by the Commission so to do, the Hub System described will have the beneficial results listed.

Unless the authority requested is granted there will be a return to the continuing erosion of express service that has existed up to the inauguration of the Hub System under the emer-

gency authority granted by the Commission. With further decreases in the number of available passenger trains for handling "express" between terminals traffic again will be delayed and accumulate at R E A's transfer facilities. Intransit time between major marketing areas again will be so extended that in effect shippers will be deprived of R E A's nationwide transportation service for small shipments. With no other transportation agency capable of taking R E A's place, there will be a serious impact on the nation's economy. Manufacturers, who now must distribute their traffic on a nationwide basis to maintain customers' inventories by forwarding small amounts of merchandise on a day-to-day basis, will have curtailed markets. Without the requested authority, R E A's service will no longer be adequate to serve their markets.

Granting of the authority sought will provide the only solution to the problem of continuing the essential transportation service rendered by R E A to the entire country.

R E A is now operating the Hub System pursuant to the emergency authority granted by the Commission. The operation must continue.

EXPLANATION OF ATTACHMENTS

Because of the unusual nature of this application, applicant has attempted to devise a simple manner of identifying the authority requested and at the same time segmenting the descriptions of the authority requested in such a manner as to conform to the Hub Concept proposed. In order to clearly indicate a separation between the authority now held by the applicant and which will continue to be used under the proposed Hub System and the additional segments required in order to complete the total operation, the attached descriptions are broken down into two categories, the "Primary System, Hub-to-Hub" and the "Secondary System, Hub-to-Satellite". The first set of descriptions describes the Primary System, those routes necessary to operate between the 24 Hubs. The second category of descriptions (24 in number), the Secondary System, describes the routes flowing from each Hub to the "satellite" points to be served out of each Hub. Each category of descriptions is in turn divided into two columns; one, a description of segments of existing authorized routes that will continue to be used in connection with the Hub System. In the right-hand column is described the routes for which emergency authority is hereby requested.

Each Hub has been numbered from 1 through 24. Each route out of each Hub has been numbered with a prefix

number indicating the Hub and a suffix number indicating the number of the route within the Hub. For example, Los Angeles, California has been designated as Hub No. 24. The route from Los Angeles to Boulder City, California is designated as Route 24-1. In the left-hand column there is described the applicant's existing authority that will continue to be used in its operations between Los Angeles and Las Vegas. In the right-hand column, the route from Las Vegas to Boulder City is described. The routes described in the right-hand column are the routes being sought hereunder.

There is also attached two related categories of maps. There is one map of the United States on which is shown in green the existing routes that will continue to be used under the Hub System and for which R E A has existing authority. The routes shown in red on the map relate to the authorities requested for the Hub-to-Hub portion of this application. There are also attached 24 maps showing each Hub separately. On these 24 maps the same color coding is used. In other words, the green routes shown on all the maps are those routes described in the left-hand column of the attached descriptions and the routes shown in red are those described in the right-hand column of the attached descriptions.

Exhibit 3

Interstate Commerce Commission

Washington, D.C. 20423

I, H. GORDON HOMME, JR., Acting Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the attached is a true copy of the Application on form OP-95, recei ed March 2, 1971, in Docket No. MC-66562 (Sub No.-2337 A), REA Express, Inc., New York, New York, the original of ich is now on file and of record in the office of said mission.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the Seal of said Commission this 26th day of August, A.D., 1976.

H. Gordon Homme Jr.

ACTING SECRETARY OF THE INTERSTATE COMMERCE COMMISSION

381

7. It previously [ ]has [X]has not opposed any other carrier's application for authority to perform the service here proposed; or [ ]does [X]does not have knowledge of any such application. If answer is affirmative, give other applicant's name, address, docket number, or other information identifying that application

---

8. It [X]does [ ]does not intend to tack the authority here applied for to other authority held by it, or to interline with other carriers. If either is intended, specify docket number of authority to be tacked or joined, or the point or points at which it is proposed to interline with another carrier

Carriers will publish points for any interline arrangements will be shown in KEA's tariffs

---

9. It attaches to each copy of this application a map showing: (a) The route or routes and points to be served, if a regular route operation; or (b) A description of the territory or territories in or between which service is proposed, if an irregular route operation.

Not applicable

10. It attaches a letter or letters indicating shipper support, with detailed information as follows:

(a) Accurate description of commodity, quantity and frequency of shipments to move, and consequences of denial of this application.

(b) Statement that there [ ]is [X]is not any carrier service available (rail or motor), either single line or by interline, between the points involved. If any service is available, indicate to what extent it has been used, what effort has been made to utilize it, whether carriers with authority have refused to furnish service, the manner and extent that existing services, if any, are inadequate, and detailed reasons as to why additional services are needed. If shipper's support is based on alleged failure of existing carriers to provide service, names and addresses of such carriers must be furnished.

(c) Shipper [X]has [ ]has not supported a prior application by applicant herein or any other person seeking authority to perform the service here proposed. If answer is affirmative, state name and address of applicant, docket number, whether granted or denied and date of such action

1,355 shipper support statements accompany this application.

Applicant further states that:

11. It is aware that a grant of the authority here requested will create no presumption that corresponding permanent authority will hereafter be granted.

12. If the authority here requested is granted applicant will comply with the tariff requirements of the Interstate Commerce Act before beginning operation and will fill out and forward to the Commission one copy of Form BOC-3 (Designation of Agents), and will mail a copy to the State Board of each State involved, except in instances where such filings already have been made.

It [X]does [ ]does not desire telegraphic notice, collect, of the action taken on this application.

Date March 2,1971 Signature Arthur M. Wischart

Arthur M. Wischart
Vice President and General Counsel

Please send correspondence to:

Arthur M. Wischart
Vice President and General Counsel
KEA Express, Inc.
219 East 42nd Street
New York, N.Y. 10017

BEST COPY AVAILABLE

Form O.-95

INTERSTATE COMMERCE COMMISSION

Office of Proceedings

Interstate Commerce Commission BUREAU OF OPERATIONS RECEIVED MAR 2 1971 NEW YORK, N.Y.

Form approved Budget Bureau No. 60-R-338

FEE RECEIPT

Fee $ 40 No. 71

D. No. 8 Date 3/1/71

Sig. [signature] ICC-Field

APPLICATION FOR TEMPORARY AUTHORITY

(File original and six copies of application with nearest representative of Bureau of Operations)

No. MC 66562 Sub 13

Date MAR 8 1971

Fee $ 40.00

REA Express, Inc. (Name of applicant) (Trade name, if any)

219 East 42nd Street (Street address) New York, New York 10017 (State & Zip Code)

ICC Washington, D.C. (City)

requests temporary authority for 180 days to transport commodities generally moving in express service as a common ~~(EXXXXXXXXX)~~ carrier by motor vehicle in interstate or foreign commerce

from _____ to _____

(If return movement describe separately) over [X] non-radial irregular routes, [ ] regular routes as follows:

between all points within the United States, including the District of Columbia

In support of this request applicant states:

1. It [ ]has [X]~~has not~~ heretofore held emergency temporary authority for the service here proposed. If it has, specify ICC docket number, total time granted, and expiration date. MC 66562, Region No. 1 ETA Certification No. 1, commencing 2/[illegible]/70 and granted until first midnight after rail service described in Ex Parte No. 64 shall have been instituted but not for more than 30 days.

2. It [ ]is [X]~~is not~~ now operating as an interstate motor carrier under a certificate, permit, or second proviso registration under section 206(a)(1) of the Interstate Commerce Act. If so operating, give docket number MC-66562 and subnumbers thereunder.

3. It does not control, is not controlled by, nor is it under common control with any other carrier. ~~except as follows: (Give complete name and docket number~~

4. It [ ]does [ ]does not have pending an application for permanent authority to perform the same service as proposed herein. If it has, give docket number, filing date and status. There are applications under which temporary authority has been granted such as Sub 2308 TA and pending applications for permanent authority such as Sub 2314. See explanatory statement submitted herewith for the reasons for this application. The final grant of the corresponding permanent irregular route authority to be sought within 60 days after this application will supersede all pending applications.

5. It [X]does [ ]~~does not~~ intend to apply for corresponding permanent authority. If it does so intend, state when within 60 days from date of this application.

6. It [ ]~~has~~ [X]has not previously made application, on which final action has been taken, for authority to perform the same service, in whole or in part, as that here proposed. If it has, state whether for temporary or permanent authority, give docket number, and date and basis of final action.

Exception: See No. 1 above.

MC66562, sub 2337 TA
J. I. I.

2337

Interstate Commerce Commission
BUREAU OF OPERATIONS
RECEIVED
MAR 2 1971
NEW YORK, N.Y.

BEFORE THE

INTERSTATE COMMERCE COMMISSION

APPLICATION OF REA EXPRESS, INC. FOR TEMPORARY AUTHORITY TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE OVER IRREGULAR ROUTES.

INTERSTATE COMMERCE COMMISSION
RECEIVED
MAR 8 1971
ADMINISTRATIVE SERVICES
MAIL BRANCH

Arthur M. Wisehart
Vice President & General Counsel
REA Express, Inc.
219 East 42nd Street
New York, New York, 10017

Of Counsel:

John E. Robson
Leibman, Williams, Bennett,
Baird and Minow
1156 Fifteenth Street, N.W.
Washington, D.C. 20005

March 1, 1971

STATEMENT IN SUPPORT OF APPLICATION OF REA EXPRESS, INC. FOR IRREGULAR ROUTE AUTHORITY

Preliminary Statement

REA Express submits this statement in support of its application for authority to operate motor vehicles transporting commodities generally moving in express service between all points in the United States over non-radial irregular routes. REA is compelled to file this application by circumstances which threaten REA's continued ability to provide nationwide express service.

Hub Application

In 1968, when REA was still owned by the railroads, REA requested and received from the Commission emergency, later temporary, regular route authority to operate motor vehicles for the line-haul movement of express between major U.S. cities, referred to as "Hubs". REA's pre-"Hub" operating problems, operating losses, and resulting precarious financial condition were explained to the Commission in detail in REA's Application for Temporary Authority. Temporary authority was granted by the Commission, upheld on appeal, and the corresponding application for permanent authority is presently pending before the Commission (MC-66562 Sub No. 2314). Since April 3, 1968, REA has been operating under the Hub system.

New Management

In August 1969, a group of investors headed by REA's new management acquired control of REA Express from its railroad owners. The new management has exerted every effort to make the Hub system adequate for REA and the public in REA's historic nationwide service area. Extensive operational improvements have been combined with strong sales effort and major marketing innovations. But the Hub system nevertheless has proved to be both costly and inefficient for REA, and inadequate in providing service to the public. Confronted with the need to proceed with the Hub case, REA's new management began an analysis of the system and concluded that it did not fit REA's public service and operational requirements.

Analysis by A. T. Kearney & Company, Inc.

An analysis also was requested from the experienced independent firm of transportation consultants, A. T. Kearney & Company. A copy of the A. T. Kearney analysis is annexed hereto as Exhibit A. It finds:

> "In summary, express is a unique service that is distinctly different from the transportation service provided by other transportation companies." ***
>
> "This uniqueness requires REA to transport virtually all commodities between an extremely large number of

> points on an 'on demand' basis. Non-radial, irregular route authority (rather than fixed, regular routes) is essential in providing the quick adjustment to change that is necessary if a true express service is to be continuously provided to the public. Non-radial, irregular route authority, instead of fixed regular routes, would eliminate the deficiencies in REA's present authority. Improved express service would be available to the 20,000 cities and communities now served in the REA system -- many of which rely on REA as the only means of small shipment service. At the same time, REA's improved service performance may help solve the Country's extremely critical small shipments problem." (Emphasis added.)

As is clear from the Kearney analysis, there is no way that REA's present authority can be used to provide the flexible, efficient, economical service required for express operations in today's world. The defects in the Hub system may be summarized under two broad categories. First, it compels excessive reliance upon rail TOFC "piggyback" service. Piggyback service has proved to be entirely inadequate for the express movement of shipments; it is slow, subject to disruption as a result of labor controversies, and substantially more expensive than REA's own motor vehicle operations. The use of piggyback diminishes REA's flexibility in handling express by imposing arbitrary schedules, yard cutoff times, and inefficient routings of traffic.

Second, the Hub temporary authority forces REA to operate over specified motor routes with uneconomically low loads and unnecessary circuity. The structure of the Hub authority requires, for example, many "back hauls" from a Hub to a satellite terminal and prevents more efficient peddle runs.

Service to the Public

The inadequacies and lack of flexibility of REA's existing authority have penalized the shipping and receiving public as well as REA. Service has not been at a level which the shipping public requires and which REA is confident can be achieved with irregular route authority.

Service is afflicted with continued delays in transit time and burdensome, unnecessary costs. Large segments of the shipping public, as a result, have been deprived of adequate express service. Shipment volume has declined significantly under the Hub authority despite an aggressive advertising and sales program. Inefficiencies caused by circuity, multiple transfers and in-transit delays have produced ever-mounting costs.

The problems created by the Hub authority were highlighted in the testimony before the Commission in Docket No. MC-129100 (Sub No. 1), United Parcel Service, Inc., (Ohio) Extension -- Colorado. In the decision of January 12, 1971,

the Examiner noted:

> "Generally the witnesses that have used REA service have found it unsatisfactory and a number of them gave specific instances of poor service." (p.15)*

Shipper Support

Filed with this application are 1,355 letters of support from shippers -- more than three times as many as were submitted with the Hub application. For convenient reference, 100 of them are annexed hereto as Exhibit B. They constitute an eloquent indication of the immedate and urgent need for adequate express service as well as the difficulties imposed by the operations under the Hub system.

Background

Express service in the United States began in 1839 when W. F. Harnden began carrying small packages between New York and Boston in a handbag. Within two years, Henry Wells (later Wells Fargo) started similar operations between New York and Buffalo, and Alvin Adams (later Adams Express) began competing with Harnden between Boston and New York.

From those humble beginnings, express service

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* The record in that case contains many examples of delays in REA transit time caused by the Hub system as testified to by various shippers (Tr. 61, 103, 147, 223, 247, 440, 496, 652, 702 - 703, 961, 1139 - 1140, and 1153).

expanded throughout the United States. But, importantly, it was always intermodal in concept. Express used ships, stagecoaches, relay ponies, handcarts, trucks, railroads, and other means of transportation. Rafts were improvised for rivers and streams when floods or ice knocked bridges out.

As a result of a World War I decision of the Director General of the Railroads, the express companies were consolidated into a single operation. That operation, as this Commission knows, was purchased by the railroads in 1929 and became REA.

During the period of railroad control, the Express Company's operations were heavily dependent upon the railroads, and its management philosophy was dominated by railroad thinking. As the Supreme Court noted in Denver & Rio Grande v. United States, 387 U.S. 485 at 504-505 (1967):

> "There is certainly support for the position that REA needs to free 'itself from the control and domination previously exercised by its railroad shareholders over its operations.' 80 ICC Ann. Rep., p. 22 (1966). The strong ties between REA and the railroads led to the operation of REA in the railroads' own interests, without regard to their coincidence with REA's best interests or the public interest."

Even under railroad domination, however, it became clear that adequate express service could not be

performed for the public without relying heavily upon motor vehicles. The Commission noted in the Determination of Status case (21 M.C.C. 161, 163 (1939)):

> "Since its inception express transportation has kept in step with the times and changing conditions. Manual- and horse-drawn vehicles have been replaced with motor vehicles for the performance of pick-up and delivery service and other terminal services, which have been expanded with the improvement of streets and highways; and motor-vehicle service has been substituted in lieu of rail transportation where passenger-train service has been curtailed or discontinued because of lack of patronage. Thus motor-vehicle operations have become an essential and important factor in the rendition of modern express service. In conducting such service and other transportation services rendered by it, the Agency itself operates over 9,200 motor vehicles throughout its entire system, and, in addition, utilizes in various ways the services of a large number of motor carriers, under contracts with them. Its own motor vehicles and employees are used indiscriminately in the performance of its several types of service, and there is no segregation of accounts for such operations."

Expansion of Parcel Post

In 1966, Section 4552 of Title 39, United States Code, was amended to increase the size of Parcel Post in successive stages up to 40 pounds in weight as of July 1, 1969. Size per parcel was increased to reach 84 inches in girth and length combined effective July 1, 1971. These changes have had and will continue to have a devastating effect

upon REA.

As the Senate Post Office and Civil Service Committee said in approving the 1967 legislation:*

> "The maintenance of an efficient nationwide express service is as important an objective of national transportation policy as the maintenance of an efficient nationwide parcel post system. . . . The committee hopes that the appropriate regulatory bodies will take cognizance of the vital importance of maintaining an efficient private express system."

Development of Hub Authority

With the drastic curtailment of passenger trains, coupled with the enlargement of Parcel Post sizes and weights, emergency measures were required in 1968 to keep REA going. The Hub application resulted. The authority sought by that application was not the result of scientific analysis of the kind of system needed to fulfill the public need, however. Instead, it was a panicky response of a management subservient to railroad owners. The resulting authority was "railroad" in concept, with fixed, rigid routes radiating like railroad tracks from permanent "hubs". It was also "railroad" in the sense that it was premised on the extensive use of TOFC piggyback service to be purchased from the railroads. The Hub route system made REA a captive customer of the railroads, and a once proud express service was slowed to the crawl of

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* S. Rept. 1534 (89th Cong. 2d Sess. 1966), pp. 6-7

the freight trains.

New Opportunity

Free at last from years of railroad control and with an aggressive, young management group, REA is now seeking to resume its logical development as a true intermodal transportation system specializing in express service. This opportunity arises at the same time when the United States is experiencing the worst small shipment problem in history.

Small shipments are the neglected orphan of other modes of transportation. Other carriers, as the Commission has found, avoid small shipments by refusing to accept them, discouraging their tender, delaying their movement, pricing them out of the market, imposing embargoes, packaging and tariff restrictions, or cancelling through route and joint rate agreements. See I.C.C., Report of Basic Policy Matters Under Consideration by the Interstate Commerce Commission 66 (1969). Some carriers accept certain small shipments which they can handle profitably, but put weight and size limitations in their certificates to exclude others. Only REA carries a full range of such shipments.

Small shipments are neglected by other modes and carriers because they are not equipped to handle them economically, or on a nation-wide basis -- the very things which, with the proper type of authority, REA is best equipped to do. With its fleet of 4,000 line haul trailers, 6,500 other motor vehicles, and more on order, REA can provide the express service for which,

as demonstrated by the letters submitted with this application, there is such an immediate and urgent need . Irregular route authority will make available REA's new "Silver Bullet" 48-hour service on a flexible basis, as warranted by traffic flow, to shippers in any part of the country.

Hub Decision Supports Application

The findings of the I.C.C. in granting the Hub temporary authority amply support the grant of the irregular route authority requested herein, which is even better attuned to the public need. It found inter alia (Order No. MC 66562 Sub 2308 TA):

> "... That among other factors applicant predicates its request for relief upon the well-known crisis in the movement of small shipments; the circuitous, inefficient and increasing inadequacy of its traditional pattern of a line haul transportation resulting from curtailed rail passenger service, discontinuance of passenger train service and the elimination of mail carrying trains, and the cancellation by certain rail carriers of their joint agreements with REA in connection with the movement of traffic jointly by rail and motor service;
>
> "... That such cancellations and discontinuance have resulted in REA having to conduct inefficient operations under its present authority, that it has suffered severe financial losses, and that this trend is continuing and is being aggravated by the inefficient manner of operation which REA is forced to conduct under its present authority;"

The Commission was sustained on appeal in Saginaw Transfer Company, Inc. v. United States, 312 F. Supp. 662 (E.D. Mich. 1970).

Terminal Areas Case

In the Terminal Areas case the Commission had occasion to consider the distinctive characteristics of the express service provided by REA. Ex Parte No. 242, Express Company Terminal Areas, 332 I.C.C. 91 (1967), aff'd, Northern Freight Lines, Inc. v. United States, 304 F. Supp. 536 (N.D. Ga. 1969), aff'd per curiam, 90 S. Ct. 1104 (1970).

The Commission found (332 I.C.C. at page 105):

> -- "Express service has held a significant and unique position in this nation's transportation system for over a century";
>
> --"we recognise that express service has a distinctive character";
>
> --"we cannot overlook the numerous benefits presently made available to the public which are generally unavailable from other types of carriers";

(and at page 106)

> --"we see no reason to chain express operations to a formula tailored solely to the specific underlying modes of transportation used, particularly where the problems and services related to REA's multi-modal operations differ substantially from those peculiar to the separate modes and the application of such criteria could impose obstacles of such substantial nature as likely to impair the evolution and development of express service."

The same considerations apply just as strongly to the type of over-the-road authority operated by REA. "To

chain express operations to a formula tailored solely to the specific underlying modes of transportation used" is precisely what the Hub authority does -- and what this application seeks to bring to an end.

The Emergency Situation

Costly, inefficient operations under the Hub authority and the resulting inadequate service and declining volume have placed express service, and REA, in a true emergency situation. Continued financial deficits threaten the very existence of the company and its ability to continue express service. By virtue of the strenuous cost-cutting efforts of REA's new management, operating losses have been dramatically reduced in the last two fiscal years from $43,000,000 to about $7,000,000. However, in the last six months, there was a loss of over $6,000,000, and substantial increases in costs are in prospect on July 1, 1971 with the expiration of the labor agreement.

REA's options are limited. It may be forced to curtail service drastically, or even terminate operations, to the great detriment of shippers all over the country as well as its employees. Or, REA can seek sharp rate increases in an attempt to achieve closer to a break-even position. But, apart from the obvious impact on shippers and attempts to halt inflationary pressures, increased rates promise to lead REA ever deeper into the cycle of reduced volume and higher per shipment

costs, and will do nothing to help improve the quality of service.

The only real solution to the predicament is to be permitted to increase efficiency and improve the quality of the service so that volume can be restored and per shipment costs reduced. To do this the outmoded railroad-oriented authority now operated by REA must be replaced by the flexibility of the authority sought in this application. With each day of delay, shippers are deprived of adequate express service and REA's financial distress becomes even more acute.

Irregular route authority will bring to an end the "band-aid" approach followed in the past, resulting in (a) a patchwork of bits and pieces of authority, (b) so many proceedings that they are virtually uncountable, and (c) great cost to REA, the public and the government.

Most importantly, it will permit the performance of a true express service for which there is an immediate and urgent public need not now being satisfied and which no other existing carrier is remotely capable of satisfying. The public demand for such a service is voiced in the 1,355 letters from representative shippers submitted with this application. These letters are but an indication of a chronic transportation problem which has been plaguing this country for years. The small shipment crisis figures prominently in every important statement by the Commission, and in the Commission's findings

in the Hub-TA and Terminal Areas cases. The new management at REA has the will to bring that crisis to an end and, with irregular route authority, it will have the way to do so.

CONCLUSION

This application requests the kind of authority which will satisfy a critical public need and, in view of the emergency confronting REA and the shippers throughout the nation dependent upon express service, temporary authority is urgently requested.

Respectfully submitted,

Arthur M. Wisehart

Arthur M. Wisehart
Vice President & General Counsel
REA Express, Inc.
219 East 42nd Street
New York, New York 10017

Of Counsel:

John E. Robson
Leibman, Williams, Bennett,
Baird and Minow
1156 Fifteenth Street, N.W.
Washington, D.C. 20005

March 1, 1971

EXHIBIT A

A. T. KEARNEY & COMPANY, INC.
MANAGEMENT CONSULTANTS
CHICAGO · NEW YORK · WASHINGTON, D C · SAN FRANCISCO · LOS ANGELES · CLEVELAND
SUBSIDIARIES: DUSSELDORF · MILAN · PARIS · LONDON

100 SOUTH WACKER DRIVE
CHICAGO, ILLINOIS 60606
(312) 782-2868

February 4, 1971

Mr. Arthur Wisehart
Vice President and General Counsel
REA Express, Inc.
219 East 42nd Street
New York, New York 10017

Dear Mr. Wisehart:

Enclosed is a document that summarizes our analysis of the type of motor vehicle authority essential for REA Express.

A. T. Kearney & Co. Inc.

ANALYSIS OF REA MOTOR VEHICLE OPERATING AUTHORITY

INTRODUCTION

REA has struggled in recent years with the problem of providing adequate express service to the public. After long experience, it has become evident that this objective is being frustrated by its present motor vehicle operating authority.

Express service operates under a basic all-commodity concept. REA's surface operations, therefore, cannot follow the strategy used by regular route motor carriers of selective solicitation by commodity and shipment size. Express service includes types of traffic which others tend to ignore or can't handle, and the costs involved must be kept to a minimum if the service is to be performed profitably. Broad, nationwide coverage is also inherent in express service. In order to fulfill its obligation of performing an express service, it is necessary for REA to move its shipments without wasteful backhauling and circuity.

A. T. Kearney & Company, Inc. has analyzed the problem in terms of all pertinent factors, including the changing patterns of express shipments, and technological, economic and demographis developments.

REA's present surface operating authority is unsatisfactory for providing adequate express service to the public on a profitable basis. REA's present fragmented, regular-route authority makes REA's system of operations inflexible

and, by its very nature, cannot be responsive to the changing patterns of demand for express service.

(a) Study Objectives and Scope

The objectives of this study were:

1. To analyze REA's present surface authority for providing express service.

2. To evaluate alternatives to the present authority, particularly irregular route authority.

Included in the scope of the study was an examination of historical developments in regulation of REA. Special emphasis was placed on understanding the events leading to REA's present Hub temporary authority.

(b) Method of Approach

In general, the approach to this study included these basic steps:

1. Examination of the developments in REA's line haul system prior to the Hub temporary authority application.

2. Analysis of the Hub temporary authority with respect to its adequacy in providing express transportation.

3. Evaluation of non-radial, irregular route motor vehicle operating authority as a basis for providing express service.

4. Preparation of this report on our findings and conclusions.

(c) Development of Present Authority

REA's acquisition of motor vehicle operating authority began in the 1930's when the ICC required REA to obtain motor vehicle operating authority for its operations. This authority was obtained to replace discontinued rail service. As the railroads continued to drop rail passenger service, REA continued to secure motor vehicle operating authority as a substitute (there was literal substitution of truck for rail, as REA's motor vehicles were operated similarly to railroad passenger train service, including scheduled arrivals and departures, drivers associated with the seniority districts of the Brotherhood of Railway Clerks, bid runs, 100-mile compensation, etc.). The authority that resulted from truck-for-rail substitution is the basis of REA's present permanent authority which generally allows REA to provide short haul transportation over fixed routes between the old major passenger train terminals and nearby towns and rural areas.

In 1968 REA obtained emergency and then temporary regular route motor vehicle operating authority in order to operate a new Hub system. This authority was sought because the existing patchwork of authority was inadequate to provide express service in the face of the railroads' discontinuance of passenger trains from roughly 10,000 in the 1930's to about 2600 in 1957, and to only 741 by the end of 1967.

Under the emergency circumstances resulting from this rapidly accelerated decrease in rail service, REA was forced to redesign its entire express line-haul system. Despite its intent to develop a system to satisfy market and shipper demands, REA's management in 1968 did not seek authority adequate to the requirements of a new system. This occurred because of these basic factors:

1. The severity of the problem placed REA's management under extreme time pressure. The resulting application under these circumstances was far from the comprehensive network needed.

2. The design of the motor vehicle operating system was created by REA personnel who had a distinct rail orientation.

3. REA personnel had little general background in line-haul services, as the railroads for the most part planned and performed these services and sold them to REA.

The resulting authority for interstate traffic (permanent plus temporary) has limited REA to serving almost all the points as if the railroad passenger trains still formed the backbone of its line-haul system. However, this same authority has limited REA because many of these locations are presently insignificant shipping points. Between the 1930's and present, the nation's demographic characteristics have changed. Also, many of REA's terminals are now improperly located to provide economical express service to present market areas.

(d) Deficiencies of Regular Route Type of Authority

The evaluation of REA's present regular route type authority led to the basic conclusion that it is inadequate to meet the needs of the Company in providing express service to the public on a profitable basis.

The analysis, therefore, became an evaluation of the adequacy of regular route authority -- regardless of its ultimate possible extent -- for the purpose of allowing REA to provide expeditious, economical express service to the public. The findings from this analysis indicate that REA's ability to provide this service is limited by the inflexibility inherent in regular route motor authority, more specifically:

1. There is significant inflexibility in REA's operating pattern because shipments must move through terminal gateways, even though the volume of express shipments would economically justify direct routes which eliminate the congestion, the delay and expense, (through backhauls), which result from the compulsory use of gateways.

2. Efficiency is limited by regular routes and regular call schedules which do not respond to changes in traffic flow, and distribution is plagued by circuity and inflexibility. Pickup and delivery routes outside metropolitan areas cannot be quickly adjusted to changed demands.

3. The demand for express service differs from demand for scheduled or "regular" motor carrier service in that express service satisfies the spontaneous need of a shipper without restriction on commodity type and geographic coverage, whereas regular route service satisfies the periodic, scheduled nature of general commodity shipments between fixed terminal and commercial zones. Thus, the Company's present regular route authority does not permit it to serve the need for the express service which it is expected to give to the public.

4. With its present authority, REA cannot adjust to demographic characteristics and changes. REA's express service encompasses the entire United States. There are wide demographic variations throughout the United States. Yet, REA's authority is too inflexible to enable the Company to respond to demand for adequate expedited service to all potential users in various sections. The shifts in demand resulting from demographic changes would force REA to petition the ICC for numerous route modifications annually. The delays involved would deny to shippers the express service they need, pending the modification of authority. Also, the government and the parties would be subjected to the expense of needless proceedings.

5. Finally, the flexibility of irregular route authority is more consistent with REA's status as an intermodal carrier with a wide range of line haul alternatives. For example, REA's present authority was developed around an

extensive usage of TOFC on movements between Hubs. However, our study establishes that TOFC alone is not ideal or competitive in some instances.

As described above, the burdens imposed on REA because of its present authority defeat the concept of express service.

IMPACT OF IRREGULAR ROUTE AUTHORITY ON REA'S EXPRESS SERVICE

In summary, express is a unique service that is distinctly different from the transportation service provided by other transportation companies. This uniqueness was acknowledged by the Commission in approving the concept of flexibility for REA in the Terminal Area Case (322 I.C.C. at 106). The Commission's specific comments included the following:

> "In the absence of compelling circumstances, we see no reason to chain express operations to a formula tailored solely to the specific underlying modes of transportation used, particularly where the problems and services related to REA's multi-modal operations differ substantially from those peculiar to the separate modes and the application of such criteria could impose obstacles of such substantial nature as likely to impair the evolution and development of express service."

This uniqueness requires REA to transport virtually all commodities between an extremely large number of points on an "on demand" basis. Non-radial, irregular route authority (rather than fixed, regular routes) is essential in providing the quick adjustment to change that is necessary if a true express service is to be continuously provided to the public.

Non-radial, irregular route authority, instead of fixed regular routes, would eliminate the deficiencies in REA's present authority. Improved express service would be available to the 20,000 cities and communities now served in the REA system -- many of which rely on REA as the only means of small shipment service. At the same time, REA's improved service performance may help solve the Country's extremely critical small sh pments problem.

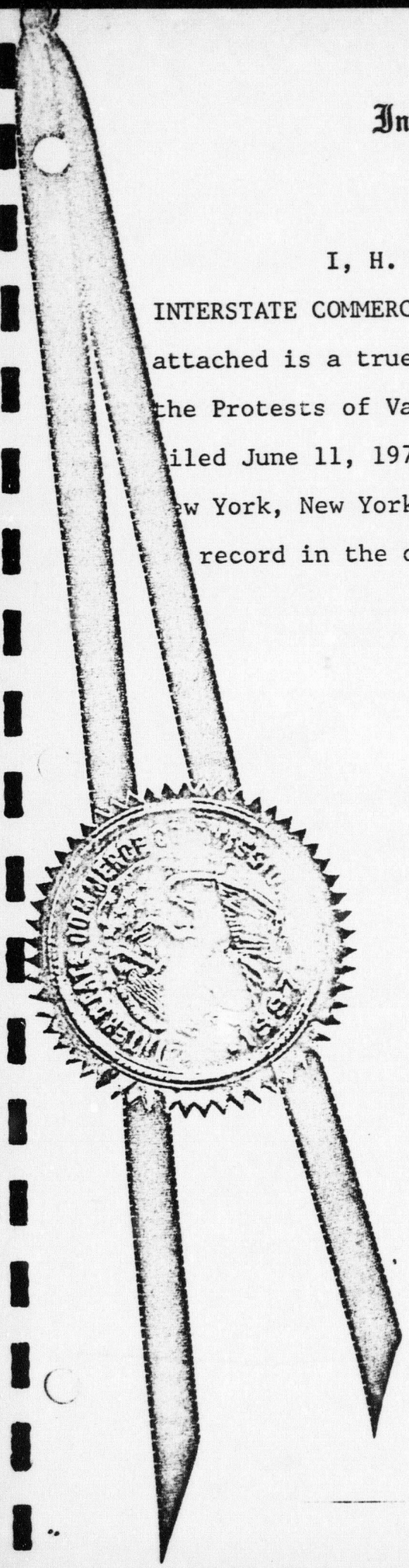
Respectfully submitted,

A. T. Kearney & Co. Inc.

E-26674

Interstate Commerce Commission
Washington, D.C. 20423

I, H. GORDON HOMME, JR., Acting Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the attached is a true copy of the Reply of REA Express, Inc. to the Protests of Various Motor Carriers and their Associations, filed June 11, 1971, in Docket No. MC-66562 (Sub No.-2337 TA), New York, New York, the original of which is now on file and of record in the office of said Commission.



IN WITNESS WHEREOF I have hereunto set my hand and affixed the Seal of said Commission this 26th day of August, A.D., 1976.

H. Gordon Homme, Jr.

ACTING SECRETARY OF THE INTERSTATE COMMERCE COMMISSION

BEFORE THE
INTERSTATE COMMERCE COMMISSION
WASHINGTON, D.C.

DOCKET NO. MC 66562 SUB 2337TA

- :

REA EXPRESS, INC. :

APPLICATION FOR TEMPORARY AUTHORITY :

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REPLY OF REA EXPRESS, INC. TO THE PROTESTS OF VARIOUS MOTOR CARRIERS AND THEIR ASSOCIATIONS

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April 21, 1971

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BEFORE THE
INTERSTATE COMMERCE COMMISSION
WASHINGTON, D.C.

DOCKET NO. MC 66562 SUB 2337TA

REA EXPRESS, INC.

APPLICATION FOR TEMPORARY AUTHORITY

REPLY OF REA EXPRESS, INC. TO THE PROTESTS
OF VARIOUS MOTOR CARRIERS AND THEIR ASSOCIATIONS

Preliminary Statement

By application dated March 2, 1971 in MC 66562 Sub 2337TA, REA Express, Inc. (REA), seeks temporary authority to transport general commodities, moving in express service throughout the United States on non-radial irregular routes. Temporary authority is sought because of circumstances which threaten REA's ability to provide nationwide express service adequate to meet the immediate and urgent need of the public for such service.

In accord with the Commission's rules and regulations, notice of REA's application was published in the Federal Register on March 17, 1971 (36 Fed. Reg. 5170). This reply is submitted in answer to protests filed by a number of motor carriers and their associations.

ISSUE PRESENTED

In 1968, when the I.C.C. granted temporary authority for REA's Hub operation, it correctly evaluated the disastrous consequences facing the public if REA lacked the authority needed to perform properly its public service mission. But, while the disease was correctly diagnosed, the wrong medicine was prescribed by REA's prior management. The deficiencies in the Hub authority have become only too apparent after three years of operation.

The study by A. T. Kearney & Company submitted with REA's application herein is an analysis of the kind of authority needed to provide adequate express service at an acceptable level of costs. The issue presented, therefore, is whether adequate express service is to be made available to the public without delay.

The motor carriers and their associations filing protests herein naturally view REA's inability to provide adequate and efficient service, or its possible demise, with something less than serious concern.

But the paramount concern of the Commission is obviously the shipping public. The unique character of REA's express service and its essential place in the nation's transportation system have been repeatedly established by the

Commission and the courts. See Ex Parte No. 242, Express Company Terminal Areas, 332 I.C.C. 91 (1967), aff'd, Northern Freight Lines, Inc. v. United States, 304 F. Supp. 536 (N.D. Ga. 1969), aff'd per curiam, 90 S. Ct. 1104 (1970). Further, as shown by the 1355 letters from shippers throughout the United States submitted with REA's application, the need of the shipping public for adequate express service is immediate and urgent, and no existi g carrier service is capable of meeting such need.

REPLY TO PROTESTS

I. Basis for Seeking Temporary Authority

A number of prot stants have questioned whether this is an appropriate case for the grant of temporary authority because of what they regard as serious questions about either the kind or e ent of authority requested.

A. Extent of Authority

Since before the Civil War, REA and its predecessors have provided express service by all modes of transportation including their own vehicles to points and places throughout the United States. See Study of REA Express published as a cooperative undertaking by the staffs of the Civil Aeronautics Board, the Federal Maritime Commission, and the Interstate Commerce Commission (August 1965). Thus REA's application does not seek to serve new points but to

remedy gaps and incongruities in its present authority which foreclose the effective use of motor vehicle service to certain points and places already served. As A. T. Kearney & Company stated in the analysis submitted with REA's application (pp. 102):

> "REA's present surface operating authority is unsatisfactory for providing adequate express service to the public on a profitable basis. REA's present fragmented, regular-route authority makes REA's system of operations inflexible and, by its very nature, cannot be responsive to the changing patterns of demand for express service."

No public interest is served by depriving shippers of adequate express service, and in this day and age the use of motor vehicles wherever traffic flow warrants must be the cornerstone of adequate and economical express service. The Kearney study finds that "REA's present authority was developed around extensive use of TOFC on movements between Hubs. However, our study establishes that TOFC alone is not ideal or competitive in some instances." (pp. 6-7) As the Commission stated in its 1970 Annual Report with respect to the small shipments problem, "most of these shipments are more susceptible to handling by truck." (p.13)

Why some points in the country should be deprived of the benefits resulting from express service by truck, when that is the most advantageous mode, is a subject

carefully avoided by the protestants. Those locations are already served by REA, but there is nothing in the law that says such service must be provided by a wasteful and inefficient method instead of the best possible method.

B. Kind of Authority

Protestants also question the kind of authority requested by REA. In their argument, however -- instead of finding support in expert analysis of the transportation problem involved by an independent firm of the stature of A. T. Kearney & Company -- protestants cite court cases decided before the motor truck was even invented.*

Naturally protestants would like to hobble REA with transportation concepts more suitable to the horse-and-buggy age, but this nation's transportation system is not a museum and the Commission should not be diverted from the solution of today's pressing problems by antiquarian studies. As found in the Kearney report (p.6):

> "3. The demand for express service differs from demand for scheduled or 'regular' motor carrier service in that express service satisfies the spontaneous need of a shipper without restriction on commodity type and geographic coverage, whereas regular route service satisfies the periodic, scheduled nature of general commodity shipments between fixed terminal and commercial zones.

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*See Retzer v. Wood, 109 U.S. 185, a state tax case decided by the Supreme Court in 1883, cited on page 14 of the protest filed by the A.T.A.

Thus, the Company's present regular route authority does not permit it to serve the need for the express service which it is expected to give to the public.

4. With its present authority, REA cannot adjust to demographic characteristics and changes. REA's express service encompasses the entire United States. There are wide demographic variations throughout the United States. Yet, REA's authority is too inflexible to enable the Company to respond to demand for adequate expedited service to all potential users in various sections. The shifts in demand resulting from demographic changes would force REA to petition the ICC for numerous route modifications annually. The delays involved would deny to shippers the express service they need, pending the modification of authority. Also, the government and the parties would be subject to the expense of needless proceedings."

The foregoing analysis is consistent with the broad authorization which has been given by the Commission to the small shipment carriers. See I.C.C. 1970 Annual Report p. 58. Contrary to protestants' allegations, the argument that irregular route authority is not appropriate for such specialized operations has long since been rejected by the Commission. See United Parcel Service, Inc., Ext. - Midwestern States, 89 M.C.C. 709 (1961); Comet Messenger & Delivery Service, Inc., 111 M.C.C. 13 (1970); Film Transit, Inc.,

110 M.C.C. 795 (1970). Some limit their carriage of small shipments to the types and sizes they want. However, the Commission's recent white paper on the subject, quoted in the next section, points out that the "small shipments problem .... encompasses a whole range of what might be termed the less desirable, or, in some cases, the totally undesirable business, as viewed by the carriers." It can not be solved by carriers which limit their traffic to packages within a narrowly restricted range of size and shape or to limited areas. Only REA carries a full range of such shipments and other traffic which motor carriers either ignore or exclude, and it is essential that it be given the authority necessary to provide adequate service for such marginal traffic in the most economical way.

The Commission had occasion to differentiate between express and ordinary freight service in the Arrowhead case, 63 M.C.C. 573 at 580 (1955):

> "Ordinary freight carriers do not usually accept small shipments of delicate and fragile commodities, as for example certain fruits, bakery goods, and confectionery because they require considerably more than average care in handling, particularly when transported in mixed loads with the general run of ordinary freight. Other commodities which are shipped only in small volume, such as live pets, perishable food gift packages, and many dated items destined to retail outlets, are also not generally

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> accepted either for the same reason or because of the inability of these carriers to assure definite delivery times, or both. Furthermore, through self-imposed limitations or by reason of specific restrictions in their operating authorities they uniformly do not transport articles of unusual value which likewise move, for the most part, in small shipments. These latter commodities require not only extra care in handling to avoid damage but also the provision of special security against loss because many in this category are both valuable and irreplaceable. By comparison express carriers accept any commodity susceptible of transportation in van-type equipment, including those commodities which the ordinary freight carriers either refuse (either openly or by neglect) when tendered in small shipments or for which they have no authority. In doing so these carriers also undertake to provide and do provide the requisite amount of special care and security needed for the safe expeditious transportation of the shipments they accept. Thus, express service in the type of equipment above indicated involves practically an unrestricted holding out commoditywise, coupled with the corresponding willingness and ability to furnish such care and security as the characteristics of the particular commodity or commodities tendered for shipment may require."

Certain of the Commission's observations in the Arrowhead case are not applicable to REA because it was not there dealing with an intermodal carrier, but one of the criteria of express singled out by the Commission was that the operation allow "the minimum practicable highway transit time" (p.581). With its wasteful circuity and backhauls

the Hub authority comes closer to insuring the maximum rather than the minimum highway transit time. The concept of express service centers on timeliness, and it is that aspect of adequate express service which is most flagrantly defeated by the rigidities of regular route over-the-road authority.

C. Statutory Basis

Section 210a(a) of the Interstate Commerce Act empowers the Commission to grant temporary authority for service for which there is an "immediate and urgent" need with no carrier service capable of meeting such need. The Commission found these statutory standards to be satisfied when it granted REA emergency T.A. and then T.A. in the Hub case, and the Commission's determination was sustained on appeal. Saginaw Transfer Company, Inc. v. United States, 312 F. Supp. 662 (E.D. Mich. 1970).

The immediate and urgent need found to exist in 1968 has in no way abated. Uneconomic operating constraints imposed by outmoded authority continue to threaten the extinction of REA and its unique public service. On March 17, 1971, the Commission sent to Congress a series of "white papers" dealing with major problem areas. The white paper on "Small Shipments" defines the problem in a way which exactly fits the kind of traffic which REA handles:

> "Although the subject to be treated in this pamphlet is generally referred to as the small shipments problem, it is broader than just that one category. In reality the problem encompasses a whole

> range of what might be termed the less desirable, or, in some cases, the totally undesirable business, as viewed by the carriers.
>
> There was a time when carriers welcomed - even solicited - all business, and considered every potential shipper a customer, and every community a potential area for more business. The size and location of the community were no more than secondary considerations.
>
> The range or scope of the problem includes small shipments, light and bulky shipments (e.g., lamp shades), hard to handle shipments (nursery trees), easily damaged shipments (new furniture), high-risk and pilfer-prone shipments (electronic items), and many others. It also includes many items which are unprofitable or marginally profitable to transport because they require irregular pick-ups or deliveries at small, out-of-the-way communities or in highly congested urban areas where operating costs are unusually high."

REA is the only nationwide carrier dedicated to solving the foregoing problem. Consistently over many years the Commission has found that there is no other carrier service capable of meeting such need. Many of the possible solutions of the problem mentioned by the Commission in its white paper impose the burden of expensive watchdogging of the motor carriers. Others would require new legislation. But what REA proposes requires no new legislation, is fully within the Commission's present powers under Section 210a(a), and is supported by prior determinations by the Commission.

II. Nature of Protests

Virtually all of the protestants are motor freight carriers and their associations. It is noteworthy that none of the carriers seriously trying to solve the small shipments problem has protested.

Clearly the protests of the truckers should be disregarded because the truckers themselves have been a large part of the problem with respect to small shipments, instead of its solution, as the Commission has repeatedly found. In the Report of Basic Policy Matters Under Consideration by the Interstate Commerce Commission (1969), it said (p.66):

> "Embargoes, rate increases, packaging and tariff restrictions, and other devices are employed by the motor carriers as an answer to their individual small shipment problems. However, the most serious threat to the maintenance of adequate small shipment service has been the increasing tendency of interline carriers to cancel their through route and joint rate agreements with other motor carriers and their refusal to participate in new agreements. The result has been that the number of informal shipper complaints concerning the deterioration of such service has been increasing sharply in the past year or two."

REA's new management is unable to understand the long continuing battle by the truckers and their associations to prevent REA from receiving the authority it needs to

carry efficiently the traffic they don't want. If the purpose or effect is to bring to its knees a deficit-ridden transportation company providing a unique public service, sanctions against such a restraint of trade are available. See Trucking Unlimited v. California Motor Transport Co., 432 F.2d 755 (9th Cir. 1970).

III. Shipper Support

The immediate and urgent need of the shipping public for adequate nationwide express service is clearly shown by the 1,355 letters from shippers -- more than three times as many as were submitted with the Hub application in 1968. These statements provide strong corroboration for what the Commission has already found about the small shipments problem, its nature and causes.

In addition to the numerous individuals and small companies dependent upon REA's services, the application was supported by many (a) large and well known shippers. Twenty typical examples for convenient reference:

Allied Stores Corporation

American Cyanamid Company

American Home Products Corporation

American Standard, Inc.

The Arrow Company

Avon Products, Inc.

Boeing, Aerospace Group

Brunswick Corporation

Control Data Corporation

Corning Glass Works

General Dynamics

Girl Scouts of the U.S.A.

Honeywell, Inc.

Motorola, Inc.

J. J. Newberry Company

Otis Elevator Company

Pacific Gas and Electric Company

E. R. Squibb & Sons, Inc.

Texas Instruments, Inc.

Westinghouse Electric Corporation

Many of the letters from shippers indicate that (b) motor carriers provide inadequate service, or actively refuse or discourage the type of traffic involved. Twenty typical examples:

Addressograph Multigraph Corporation
Allegretti & Company
American Greetings Corporation
Caro-Nan Handbags
Coats and Clark's Sales Corp.
Cordon Bleu
Dunlop Tire and Rubber Corporation
Enro Shirt Company, Inc.
Fairfield-Noble Corporation
Goldbergs' Marine Distributors Inc.
The J. L. Hudson Company
Ithacagun
Lane Bryant, Inc.
Leviton Manufacturing Company, Inc.
Luma Incorporated
E. F. MacDonald Stamp Company
National Distillers and Chemical Corporation
Southern Life & Health Insurance Company
Speedline Athletic Wear, Inc.
Timex Corporation

Other shippers stated that they require REA's services for special classes of traffic or because of the (c) special types of service it renders. Twenty typical examples:

Baptist Memorial Hospital	Blood, radioactive material
Esman's	Firearms and ammunition
Gulf-Atlantic Paint and Chemical Co.	Chemicals requiring red label
The Leisure Group, Inc.	High value shipments
Life Insurance Agency Management Association	Irreplaceable collector items
Manheim Galleries	Art objects, antiques and paintings
Manncraft Exhibitors Service	Convention & exhibition materials
Milton Roy Company	Dangerous articles
Northern Laboratories	Freezables
Pieri Creations	Fragile Lamps and Shades
The Polymer Corporation	Length
Rike's	Live animals, fish and birds
Simonsen Laboratories	Rats, mice and laboratory animals
Smith College	Trunks, skis and bicycles
Sperry Gyroscope Division, Sperry Rand Corporation	Personal effects (protective signature)
The University Museum, University of Pennsylvania	Historical films
Warner Bros. Television	Film and videotape
Watkins-Johnson Company	High value electronic devices
Top Valve Enterprises, Inc.	Valuable trading stamps
Wyeth Laboratories	Narcotics

Others emphasized the importance of REA's services in connection with the handling of important (d) <u>government traffic</u>. Twenty typical examples:

Dresser, Industrial Valve & Instrument Division

Edison, Battery Division, McGraw-Edison Company

Electronic Communications, Inc.

FMC Corporation, Northern Ordinance Division

Federal Lithograph Company

Givens

Hayes International Corporation

Howell Business Forms Incorporated

Hughes Aircraft Company

Imperial Household Shipping Co. Inc.

C. Lloyd Johnson Co. Inc.

The Markham Company, Inc.

Martin Marietta Corporation

Neptune Meter Company

Northrop Corporation

H. K. Porter Company, Inc.

Saratoga Industries

Sperry Packaging & Distributing, Inc.

Tex-Mill, Incorporated

Universal Products Company

Many shippers indicated the importance to them of (e) REA's nationwide coverage. Twenty typical examples:

Becton-Dickinson

Chemagro Corporation

V. J. Elmore, Inc.

Encyclopaedia Britannica

Ferry-Morse Seed Company, Inc.

Hewlett-Packard Company, Loveland Division

Inland Chemical Company

International Playtex Corporation

The Joseph & Feiss Co.

The H. D. Lee Company

The Mack Shirt Corporation

The Meyercord Co.

Northrup, King & Co.

Select Magazines, Inc.

Smith, Kline and French Laboratories

Utex Industries, Inc.

The Van Heusen Company

Warner's

White Stag Manufacturing Company

Zinsco Electrical Products

IV. Miscellaneous

The hyper-technicalities in many of the protests are not appropriate considerations in connection with an application for temporary authority under Section 210a(a) of the Act. "Resolution of these and other issues may properly await a decision of REA's application for permanent authority." Saginaw Transfer Company, Inc. v. United States, 312 F. Supp. 662 at 666 (E.D. Mich. 1970).

Some protestants question REA's financial condition but if the protesting carriers with weak financial conditions were weeded out of the case, there would not be many left. See Wall Street Journal, 2/24/71 (p.32).

Section 210a(a) makes no mention of financial fitness but even if this were a final decision on the merits rather than an application for temporary authority, it is clear that REA's condition more than satisfies the requirements the Commission has established. See Northeast Coach Lines Extension I.C.C. No. MC-110373 (Sub-No. 13) (May 11, 1970) (bankrupt company held fit); Brown's Connecticut Airport Service, Inc., Conversion, 103 M.C.C. 6, Division 1 ("we must keep in mind that the financial fitness of an application is pertinent only in relation to whether it can conduct the operation which it proposes .... Indeed, an extension of applicant's present authority in all probability will enable applicant to reduce its present operating deficit to a

considerable degree").

It is true that REA has suffered deficits. However, these deficits in themselves are strong reasons why temporary authority is needed to alleviate costly inefficiencies and help restore REA's financial viability. As Lord Keynes has said, "There is no such thing as a free lunch," and unless REA is given the wherewithal to improve both the quality and economy of its operations, it cannot continue to provide a full range of services for marginal shipments and locations.

Finally, protestants question whether REA has really been freed from railroad control. Had that been a significant issue, presumably the Hub authority would not have been granted in 1968, when REA still was controlled by the railroads. Since then, railroad control of REA has ended and approval of the sale of control by the railroads was given by the Civil Aeronautics Board in Order 70-7-142, July 30, 1970.*

CONCLUSION

REA has complied fully with the requirements of Section 210a(a) of the Interstate Commerce Act and its

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*Any remaining doubt that REA has escaped from railroad influence should be dispelled by the antitrust action for $345,000,000 commenced by REA against the railroads in the United States District Court for the Eastern District of Pennsylvania (Civil Action 71-802).

REA does not presume to say that it alone will solve

application for temporary authority should be granted.

Respectfully submitted,

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Exhibit 5

Interstate Commerce Commission
Washington, D.C. 20423

I, H. GORDON HOMME, JR., Acting Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the attached is a true copy of the Petition of REA Express, Inc., for Reconsideration, filed June 10, 1971, in Docket No. MC-66562 (Sub No. 2337 TA), New York, New York, the original of which is now on file and of record in the office of said Commission.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the Seal of said Commission this 26th day of August, A.D., 1976.

H. Gordon Homme, Jr.
ACTING SECRETARY OF THE INTERSTATE COMMERCE COMMISSION

BEFORE THE
INTERSTATE COMMERCE COMMISSION
WASHINGTON, D. C.

REA Express, Inc. New York, New York	No. MC-66562 (Sub-No. 2337TA)

PETITION OF REA EXPRESS, INC. FOR RECONSIDERATION

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June 11, 1971

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BEFORE THE
INTERSTATE COMMERCE COMMISSION
WASHINGTON, D. C.

REA Express, Inc. New York, New York	No. MC-66562 (Sub-No. 2337TA)

PETITION OF REA EXPRESS, INC. FOR RECONSIDERATION

REA Express, Inc. respectfully petitions the Commission, Division 1, to reconsider its order served May 12, 1971 and grant REA's application for temporary authority to transport general commodities moving in express service between points in the United States, or, in the alternative, to refer this Petition for Reconsideration to the entire Commission for decision.

Introduction

The urgency and national importance of REA's application has been undeniably established by the fact that this week the National Industrial Traffic League, the National Small Shipments Traffic Conference, the Drug and Toilet Preparation Traffic Conference and the National Retail Merchants Association, representing thousands of shippers throughout the United States, petitioned the Commission to intervene in support of REA's request temporary authority.

On March 1, 1971, REA's application for the temporary authority referred to above was filed with the Commission and on April 21, 1971 REA's reply to various protests to that application was filed. Both of these documents are attached as appendices for purposes of convenient reference and background.

Since the filing date of REA's application, the financial and cash projections for the year ending June 30, 1971 have become available. They present a grave picture. A costly strike in May over REA's attempt to introduce some essential improvements in the quality, efficiency and economy of its present express authority contributed to its current financial crisis. And on July 1, 1971 the final legislatively-authorized size increase in parcel post shipments will go into effect and make even more crucial the need for REA to obtain operating authority which will permit it to operate efficiently and economically.

As grounds for the application, REA would emphasize the total inadequacy of its motor operating authority which deprives the shipping public of critically needed small shipments express service and imposes costly operating and financial burdens on REA. Placed in jeopardy is REA's continuing ability

to provide service for marginal traffic, particularly with respect to outlying points, and to obtain the capital funds needed to improve service by acquiring new and modern equipment.

REA respectfully submits that the facts and circumstances clearly warrant the grant of authority requested. The order of Division 1 denying REA's application for temporary authority may have resulted from a failure to underscore the facts which amply establish immediate and urgent public need for the authority necessary to satisfy the statutory standards of Section 210a(a). Certainly the events since filing of the application, including the unequivocal support of the intervening national shipper groups establish such a need.

Moreover, REA believes that appropriate consideration should be given to the unique role REA's nationwide express service plays in the country's transportation system, and REA's significant service to shippers and receivers in transporting small shipments and commodities carried by no one else. The fears of some different future role for REA voiced by some of the truckers who oppose the grant of motor operating authority necessary for REA to continue its unique express service are without foundation. However, to put to rest any such concern,

REA is prepared to cooperate with the Commission and, during the pendency of the temporary authority requested herein, furnish such relevant and reasonable data as the Commission may request to enable it to satisfy itself on a continuing basis that REA's basic transportation role continues substantially as it is today.

REA submits that this petition establishes a solid foundation for reconsideration and favorable action on the application by Division 1. However, because of the national significance of the questions presented by the application and the serious adverse impact on shippers, the small shipments problem and REA if the application is to be denied, REA has requested as an alternative to the granting of the application by Division 1, that the Petition for Reconsideration be considered by the entire Commission. This would be consistent with the fact that the entire Commission acted on and granted REA's request for temporary authority in the "Hub" case (discussed below).

An Immediate and Urgent Need Exists for the Service for Which the Authority Is Sought Which No Carrier Other Than REA Performs

The statutory basis for granting the temporary authority sought by REA is found in Section 210a(a) of the Interstate

Commerce Act which empowers the Commission to grant such authority where there is an "immediate and urgent need" for the service and where no other carrier is capable of meeting such need. These standards have been fully met.

A. Shipper Support. No less than 1,355 statements from individual shippers in support of REA's application were filed with the Commission. Each of the supporting statements clearly attests to the immediate and urgent need for fast, reliable and adequate nationwide express service. Shippers described their need for express service as "essential", "critical", and "vital", pointed out the absence of any other carrier serving that need and most predicted that without express service their businesses would suffer substantial injury. The supporting shippers cover the entire spectrum of the American economy. They include large national corporations and relatively small businesses. They include shippers who require REA's express service either for special classes of traffic (e.g., blood, cream, bakery products, radioactive materials, high-value shipments, art objects, freezeables, live animals for laboratory use, trunks and other odd and outsized shipments) or because of the special types of services it renders (protective signature, armed guard, temperature control,

etc.). Other shippers underscored the necessity of REA's express service in handling important government traffic and others emphasized the importance of REA's nationwide coverage to their shipping requirements.*

This vast shipper support for REA's application unequivocally establishes the urgent and immediate need for the service. REA handles over 19 million surface shipments annually so that this substantial shipper support is only a fraction of the hundreds of thousands of the shippers, receivers and consumers throughout the United States who are presently in urgent need of the preservation and improvement of express service. And these statements do not reflect the dependency on REA of countless non-commercial shippers -- householders, students and others -- not attuned to or organized to participate in ICC proceedings and who therefore most need the Commission's protection.

B. The Small Shipments Crisis. The Commission has grappled for many years with the small shipments problem. Its

* A cross section of 100 supporting shipper statements was attached to the application and specific reference to various shipper statements and the reasons for their support of REA's application are found at pages 12-17 of REA's Reply to Protests.

own public reports have strongly and consistently demonstrated that shippers continue to face virtually insuperable obstacles in meeting small shipment demands. In its most recent report to Congress in March of this year, the Commission, in defining the scope of the small shipments problem, described very accurately the range and character of traditional REA traffic as shipments which no one else handles:

> "Although the subject to be treated in this pamphlet is generally referred to as the small shipments problem, it is broader than just that one category. In reality the problem encompasses a whole range of what might be termed the less desirable, or, in some cases, the totally undesirable business, as viewed by the carriers.
>
> There was a time when carriers welcomed --even solicited--all business, and considered every potential shipper a customer, and every community a potential area for more business. The size and location of the community were no more than secondary considerations.
>
> The range or scope of the problem includes small shipments, light and bulky shipments (e.g., lamp shades), hard-to-handle shipments (nursery trees), easily damaged shipments (new furniture), high-risk and pilfer-prone shipments (electronic items), and many others. It also includes many items which are unprofitable or marginally profitable to transport because they require irregular pick-ups or deliveries at small, out-of-the-way communities or in highly congested urban areas where operating costs are unusually high."

It is significant to note that the Commission's analysis deals not only with shipment size, but also with the problems in finding carriers for "difficult" traffic.

The facts reveal that REA's express service is one of the most significant factors in alleviating the small shipments problem as the Commission defines it. And it is puzzling that the motor carriers should object to REA's authority to handle such traffic efficiently, particularly to outlying points off the major traffic lanes. For it is this traffic and these points which the motor carriers have eluded or excluded, a matter which has not escaped the Commission's attention:

> "Embargoes, rate increases, packaging and tariff restrictions, and other devices are employed by the motor carriers as an answer to their individual small shipment problems. However, the most serious threat to the maintenance of adequate small shipment service has been the increasing tendency of interline carriers to cancel their through route and joint rate agreements with other motor carriers and their refusal to participate in new agreements." (Report on Basic Policy Matters under Consideration by the Interstate Commerce Commission [1969])*

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* Only a little over a year ago in Ex Parte No. MC-77, Restrictions on Service by Motor Common Carriers, 111 M.C.C. 151 (1970), the Commission described restrictive tariff provisions of the motor carriers: "...they most often are aimed at limiting service on small shipments.... In addition to tariff selectivity based on size, weight, origin, or destination of shipments, carriers sometimes maintain provisions which exclude the transportation of certain commodities which they are authorized to transport." (p. 153).

For decades REA has performed the only comprehensive nationwide small shipments service. The immediate and urgent need for adequate small shipments service has not abated. It has increased. REA wants to continue to provide that service.* But, as explained in detail in its application in this proceeding, it simply cannot do so economically or with operational (and service) efficiency without immediate modernization of its presently rigid motor operating rights which are not suited to express service requirements.

Indeed the Commission itself has already determined that small shipments transportation is "urgently needed."**

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* The attention and dedication of REA's new management to enhancing REA's small shipments role is underscored by the cancellation of REA's truckload, cage and pallett tariffs in 1969 and 1970. See Supp. 7 to ICC 8481 (Carload Commodity Tariff No. 32); Supp. 7 to ICC 8563 (Carload Commodity Tariff No. 28-B); Supp. 1 to ICC 8628 (Carload Commodity Tariff No. 62-A) (all July 1, 1969) and Supp. 9 to ICC 8635 (Tariff 52-D Cages and Palletts) (January 14, 1970). Moreover, REA's facilities, conveyors, and equipment are being designed and built with the objective of developing the most efficient system for the pick-up, delivery and terminal handling of small shipments. This is consistent with the 1969 detailed study of REA's traffic mix which showed that over one half of REA's shipments weighed 40 pounds or less (average of two pieces per shipment). In addition, a substantial portion of its traffic consists of lamps and shades, trunks, furniture and items which are difficult to handle because of unusual physical characteristics. Finally, significant amounts of REA shipments are picked up or delivered at homes or one-at-a-time or are otherwise difficult because they are shipped C.O.D.

** Ex Parte No. MC-77, supra, at 163.

REA does not presume to say that it alone will solve the entire small shipments problem. But the question this Commission should ask is whether, in a transportation system without any REA service or with an REA service burdened by a restrictive system of motor operating authority, the small shipments problem is not made considerably worse.

C. The "Hub" Application. There is a direct precedent for determining the existence of an immediate and urgent need satisfying the statutory standards of 210a(a) of the Interstate Commerce Act in the Commission's 1968 grant to REA of temporary authority for motor operating rights in the "Hub" application by REA. (MC-66562 Sub-No. 2308TA). In granting this authority, the Commission found an immediate and urgent need throughout the country for REA's express service and an absence of any other carrier which could meet that need. Moreover, the Commission specifically recognized that REA's continued existence and the improvement of its service were key factors in coping with the small shipments problem and that REA's efforts to operate efficiently or survive financially would be hopeless without modernized operating authority. The Commission's determination was sustained in the courts on appeal (Saginaw Transfer Company v.

United States, 312 F.Supp. 662 (E.D. Mich. 1970)). This application seeks to achieve the same goals for the same reasons.

D. REA's Express Service Is Duplicated by No Other Carrier. The unique character of REA's express service and its essential place in the country's transportation system has been consistently recognized by the Commission and the courts. See Ex Parte 242, Express Company Terminal Areas, 332 I.C.C. 91 (1967), aff'd, Northern Freight Lines, Inc. v. United States, 304 F.Supp. 536 (N.D. Ga. 1969), aff'd per curiam, 397 U.S. 247 (1970):

> "REA continues to meet the special needs of shippers to an extent not matched on a regular basis by other motor carriers. By recognizing the unique service REA continues to make available the ICC has protected the shipping public. The record is replete with evidence of shipper dependence on REA service." 304 F.Supp. 536, 542.

This view has also been expressed by Congress. As the Senate Post Office and Civil Service Committee said in approving the 1967 legislation:*

> "The maintenance of an efficient nationwide express service is as important an objective of national transportation policy as the maintenance of an efficient nationwide parcel post system.... The committee hopes that the appropriate regulatory bodies will take cognizance of the vital importance of maintaining an efficient private express system."

* S.Rep. No. 1534, 89th Cong., 2d Sess. 6-7 (1966).

It is clearly established, then, both by shipper statements and intervention in this proceeding and the consistent holdings of the Commission and the courts that there is no other carrier which performs or can perform the unique nationwide express service of REA. Indeed, no motor carrier claims that it does or will perform such service.

The Perspective of REA's Application

REA comes to this Commission having conducted over-the-road operations, through predecessor companies, since before the Civil War. Indeed, as long ago as 1939, in the Determination of Status case, the Commission noted that "motor vehicle service has been substituted in lieu of rail transportation where passenger train service has been curtailed or discontinued because of lack of patronage", and that "thus motor vehicle operations have become an essential and important factor in the rendition of modern express service." (21 M.C.C. 161, 163 (1939)).

Three years ago the Commission, because of the wholesale abandonment of passenger train service, granted REA over-the-road temporary authority which was nationwide in scope. (MC-66562 Sub-No. 2308TA).

In the present proceeding REA does not seek to expand the scope of its nationwide operations or services. It is before the Commission only because there is no alternative. REA has no incentive to expend its own or the Commission's resources with requests for operating authority. But for REA to pursue to conclusion the permanent application in the Hub case would do the Commission, the public and REA a considerable disservice. For experience demonstrates that the Hub authority precludes REA from providing to the public a modern, efficient and economical express service. The present and future of shippers and REA depends on replacing the Hub and other bits and pieces of motor operating authority it holds with the authority sought herein. Rather than imposing a burden on the Commission, REA's present application will avoid the necessity of a hearing on the Hub authority--which events have shown cannot do the job--as well as the numerous pending atomized bits and pieces of regular route authority. For REA will dismiss the Hub proceeding and all other pending applications for motor operating authority upon final approval of the grant of the authority sought.

In the Hub case there was a recognition of factors which require an altered and expanded motor vehicle authority

for REA if its nationwide express service is to continue and if REA is to survive. But REA, for the right reasons, sought the wrong authority. Perhaps because of its long history of rail orientation, REA applied for operating rights which left it unable to break from the inflexible road network which grew up when rail passenger service formed the backbone of REA's transport system.

In late 1969 a new management group, unconnected with the railroads, acquired control of REA from its railroad owners. Among the immediate tasks of the new management was preparation for the hearing on the permanent application for the Hub authority. And it was this task, coupled with the bad operational results, which caused REA to analyze the question of what kind of authority would meet the needs of the shippers for economical and efficient express service in response to today's technology.

In the course of its analysis, the new management of REA retained the well-known independent transportation consulting firm of A. T. Kearney. The Kearney study, which is appended to REA's original application in this proceeding, specifically addressed the inadequacies of REA's present motor vehicle operating rights. It concluded that only with the flexibility of nationwide

irregular route authority could the public be adequately served and REA economically operated:

> "3. The demand for express service differs from demand for scheduled or 'regular' motor carrier service in that express service satisfies the spontaneous need of a shipper without restriction on commodity type and geographic coverage, whereas regular route service satisfied the periodic, scheduled nature of general commodity shipments between fixed terminal and commercial zones. Thus, the Company's present regular route authority does not permit it to serve the need for the express service which it is expected to give to the public.
>
> "In summary, express is a unique service that is distinctly different from the transportation service provided by other transprotation companies. ***
>
> "This uniqueness requires REA to transport virtually all commodities between an extremely large number of points on an 'on demand' basis. Nonradial, irregular route authority (rather than fixed, regular routes) is essential in providing the quick adjustment to change that is necessary if a true express service is to be continuously provided to the public. Nonradial, irregular route authority, instead of fixed regular routes, would eliminate the deficiencies in REA's present authority. Improved express service would be available to the 20,000 cities and communities now served in the REA system--many of which rely on REA as the only means of small shipment service. At the same time, REA's improved service performance may help solve the country's extremely critical small shipments problem." (emphasis added)

The foregoing analysis is consistent with the Commission's determinations as to the type of authority appropriate for small shipment and other specialized carriers. See I.C.C. 1970 Annual Report, p. 58 and, e.g., United Parcel Service, Inc. Ext.-Midwestern States, 89 M.C.C. 709 (1961).

REA's new management has acted positively and aggressively to respond to shippers' needs and do the best it can with the rigidities of the Hub system. Among other things, it has instituted "Silver Bullet" service in locations where feasible. Notwithstanding the vigorous efforts of REA's management to improve service, the results have been limited to finger-in-the-dike, isolated improvements which neither cure REA's basic operating problems nor the small shipments problem.

The deficiencies in REA's present motor operating authority punish both the shipping public and REA:

- They require an overreliance on piggyback movements which result in excessive delays and higher-than-necessary costs in many of REA's movements.

- They result in circuitous movements between points and back hauls to points between hub cities which are costly both in dollars and transit time.

- They render REA unable to respond to variations in traffic character and demand peculiar to its unique express service.

There is no possibility of REA returning to railroad passenger trains as a significant element of its express service. Whatever ray of hope there might have been has certainly been snuffed out by the recent establishment of the National Railroad Passenger Corporation which was accomplished in the explicit Congressional determination that the national system of railroad passenger service had to be drastically curtailed in order for any rail passenger service to survive. The fact that Amtrak operates less than 200 trains in the entire United States is ample evidence that the Congressional judgment has been honored.

The Nationwide Aspects of the Application

Any assertions of alarm by the truckers regarding an application for nationwide motor vehicle authority for commodities in express service are unfounded. If REA were expanding its service area or commencing a new service, perhaps the case would be otherwise. But the fact is that for over a century REA has performed a nationwide express service serving thousands of points in communities of all sizes in all corners of the United States. REA does not seek to enlarge its unique service. It seeks only

to preserve and improve it. The shippers and receivers at the 20,000 points which REA presently serves in the United States urgently need that service. But the preservation of the service is dependent on obtaining the motor operating authority sought herein. The question facing the Commission is not whether REA should be chartered into new or expanded markets. It is whether REA will be permitted to obtain the operating authority absolutely essential to its ability to continue its nationwide express service and respond to the transportation needs of the 1970's.

Financial Situation

In other filings before the Commission, REA has explained its financial situation. Even with the drastic cost-cutting measures pursued by REA's new management team, REA has continued to suffer substantial operating losses. These amounted to over $40 million in fiscal 1969, $6.5 million in fiscal 1970, and will amount to approximately $16.5 million for the fiscal year ending June 30, 1971. REA's cash position is critical. The company's chance to survive and to restore itself to a financially sound condition depends on attracting additional funds so that it can purchase new equipment, modernize its facilities, and embark

on a management improvement program reaching to all levels in the company. But, how is REA to generate the funds to do this with its present motor operating authority? Unless REA can improve its service to the public and reduce its operating costs by obtaining the proper motor operating authority, how can it survive?

The Truckers' Fears of the Future Are Unfounded

REA has already responded in this proceeding to the protests of the motor carriers. That response discusses the technical, legal, and other questions which protestants have raised.

However, some of the truckers have asserted that, while REA's role as an express company in the nation's transportation system may not now impinge in any way upon the interests of the motor carrier industry, the grant of broad motor operating rights for REA's express service raises the possibility that in some future day REA's role will become that of an ordinary motor carrier and the Commission will have created a situation it will find difficult to control. The answer to such assertions is that REA today performs a service

which no other transportation company in America performs. The essential and unique nature of that role has been repeatedly recognized by the Commission and the Courts. REA believes that if the Commission grants to REA the temporary authority it seeks in this proceeding, it will do so upon the assumption that REA performs and will continue to perform substantially the role of a nationwide carrier of small shipments in express service which it has always performed.

A grant of the authority sought would have no adverse effect on existing carriers because they are not presently handling express traffic and do not hold themselves out to handle it. REA's motor operating certificates and this application are confined to "express service" and the definition of that term has been the subject of numerous Commission proceedings. The Commission has ample legal authority to insure that in the future its assumptions as to the role performed by REA are appropriately observed and may impose appropriate conditions should that become necessary. Further, REA is perfectly willing to cooperate with the Commission by furnishing such reasonable and relevant data at periodic intervals as the Commission may require to enable it to continuously monitor REA's role in the national transportation system and

satisfy itself that REA continues as a nationwide carrier of express with emphasis on small shipments. Certainly, this should allay any of the truckers' legitimate concerns about the future.

The Regulatory Opportunity

Without the motor operating authority it needs to provide an efficient and responsive nationwide express service, the future for REA is bleak. The operating and financial burdens of a restrictive motor operating authority simply cannot be carried by REA, despite its management's ingenuity and flexibility in attempting to satisfy shipper needs. Short of going or being forced out of business, REA can attempt to deal with the problem by shrinking its nationwide service to only those heavy traffic lanes between major metropolitan areas in the hopes that a drastically curtailed express system might, even with its present inadequate operating authority, be operated at least marginally. But this would mean the loss of service to hundreds of small communities and a large number of fairly good-sized ones throughout the country. REA wants to continue broad outreach express service and believes that a

contraction of its operations cannot serve the public interest. With adequate motor operating authority, however, REA should be in a position to demonstrate to lenders and investors its potential for economic success, and its management can continue efforts to improve a unique and important public transportation service.

No radical changes in regulatory legislation or structure, as some have suggested, are necessary to the solution of REA's problems. The Commission can demonstrate its responsiveness and its ability to fashion solutions to meet changing times entirely within the framework of existing statutory authority. REA's application for irregular route authority for commodities moving in express service offers the Commission an opportunity to demonstrate its sensitivity to current-day shipper and consumer needs.

REA respresents a significant national transportation asset. It has performed a unique and much-needed service for over a hundred years. It has the know-how, experience, work force and top management team to do the job. It has an intense will to succeed. It is a transportation resource which the Commission can preserve and enhance by granting the motor operating authority needed to perform its important transportation function

in an efficient way for the benefit of shippers and the public. And it is an asset which can be lost if the company is not permitted to accommodate its operations to the needs of today.

Reference of the Petition to the Entire Commission

REA respectfully submits that Division 1 can and should reconsider its earlier order in this proceeding and that ample and compelling grounds exist for its favorable action on REA's application. However, as indicated in this petition, the question before the Commission is one of crucial importance to the national transportation system, shippers, consumers, and REA's 17,000 employees. It therefore is a question appropriate for consideration by the entire Commission. There is precedent for this, for REA's application for temporary authority in the Hub case was acted upon by the entire Commission. And the stakes for the country, REA and the Commission are higher now. At the very least, then, if Division 1 does not itself decide to grant the authority requested by REA, the issue should be referred to the entire Commission for decision.

Conclusion

The factual and legal basis for the Commission's grant of the authority sought by REA has been clearly established. The Commission's grant or denial of the authority is a matter of the exercise of its discretion. REA believes that the benefits to the shipping and receiving public, to REA, and to the regulatory processes of the Commission are manifest. In making this decision the Commission, in weighing those benefits, might ask who will be benefited by denial of the authority. Certainly not shippers who have clearly voiced their support of the application and their need for REA's express service. Certainly not REA which is in urgent need of relief from a restrictive system of operating rights which will not permit it to operate efficiently or economically. And certainly not the truckers who neither want nor hold themselves out to carry the traffic or perform the service REA performs.

Accordingly, REA respectfully requests that the Commission, Division 1, grant the temporary authority sought or, in the alternative, refer this Petition for Reconsideration to the entire Commission for decision.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Petition of REA Express, Inc. for Reconsideration has been served this day, June 11, 1971, by United States mail, postage prepaid, upon all parties of record in this proceeding.

Elroy H. Wolff

on the routes that were being used.

A No,sir, I have no documentary evidence. I am sorry.

Mr. Cleary: No further questions, your Honor.

Mr. Streeter. I have no questions on redirect, your Honor.

I move the admission of Appendix 16.

Mr. Cleary: Your Honor, I would like to restate my objections, and I would like at this time to ask that the document that I gave to the reporter Friday, I thought I asked that it be assigned a number and I realize in reading the transcript at page 773 where I did offer the document, I did not apparently ask that it be assigned a number.

I ask that that be assigned a number as counsel's Exhibit, for the point of argument, so that it can be referred to.

I gave that document to counsel, to your Honor and to the reporter on Friday.

I, for the same reasons stated in that document, object to the admission of this appendix.

Judge Beddow: We will identify Defense Counsel's Exhibit as No. 13.

(Defendant's Exhibit No. 13 Counsel Cleary marked for identification.)

Judge Beddow: Exhibits 12 and 13 both counsel exhibits will be received into evidence.

A I don't know whether people would say that or not, but I think regardless of the exact number, what the exact number was, the testimony today has indicated that somewhere around 55-60 million shipments for many years would in itself indicate that we did not handle all of those in accordance with instructions. We even deferred to.

Q From your experience at Los Angeles, what percentage of the people consigning freight for movement by REA would be told exactly what train, during the period trains were being used, their shipment would go on?

A I don't really have any way to answer that as to specific trains.

Q Wouldn't it be a rather isolated circumstance, maybe limited to peak-volume customers, such as the cut flower people, who had a particular requirement and need because of the nature of cut flowers, to know what trains would be used? They would be the ones who would be informed, and generally for most traffic other than, perhaps, some of the exotic items you referred to, there wouldn't be such information given to the shippers as to a specific train or specific schedule that would be utilized?

A Well, yes. For example, in Los Angeles, in my experience, the largest shipper we had was Catalina, Inc., the manufacturers of swim suits and sportswear, and the traffic manager at Catalina had a copy of all our schedules.

Now, we did not go through the process each day of telling him that this shipment is going on this train, but he was fully aware of the schedules that his traffic would move from Los Angeles to St. Louis, and roughly when, taking that into account with when he gave us the shipment, he expected it to be on the next available train.

Q When you were running the hub operations out of Atlanta, wouldn't all your shippers, including just the fellow off the street like I might walk in, expect that his shipment would be handled outbound in the next available outbound vehicle, whether it be a truck or a train or anything else that you might be utilizing to move shipments to the destination that was involved? Wouldn't every shipper expect you to move it out of the next available one?

A Well, I think the shipping public would, or did expect REA to move their shipments on the next available train, or truck schedule.

QDo the shippers via Spector Freight System, Inc., in your opinion, based upon the knowledge of the operations, expect that their shipments,regardless of size, regardless of whether it is just a fellow like myself coming by and giving you a trunk or something else, expect you to handle it on the next available ourbound vehicle?

Mr. Peterman: Objection. Outside the scope of direct. The witness makes no reference whatsoever in any of his direct

Ex 13

BEFORE THE

INTERSTATE COMMERCE COMMISSION

No. MC-C-8862
BRADA MILLER FREIGHT SYSTEM, INC. v. REXCO, INC. and REA EXPRESS, INC.

No. MC-C-8864
SCHNEIDER TRANSPORT, INC. v. REA EXPRESS, INC.

No. MC-C-8867
AMERICAN TRUCKING ASSOCIATIONS, INC. v. REA EXPRESS, INC.

No. MC-C-8874
ASSOCIATED TRUCK LINES, INC. ET AL. v. REA EXPRESS, INC.

No. MC-66562 (Sub-No. 2345) (Part No. 181)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS, INC. FOR CANCELLATION OF TEMORARY AUTHORITIES

No. MC-66562 (Sub-No. 2308 TA)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS, INC. FOR CANCELLATION OF TEMPORARY AUTHORITIES

OBJECTION TO THE ADMISSIBILITY AND MOTION TO STRIKE SUBMITTED BY REA EXPRESS, INC., C. ORVIS SOWERWINE, TRUSTEE IN BANKRUPTCY, DIRECTED AGAINST MOTOR CARRIER TESTIMONY REGARDING ISSUES OF PUBLIC CONVENIENCE AND NECESSITY, INCLUDING RELATED FIT, WILLING AND ABLE STATUS OF THE MOTOR CARRIERS

Comes now REA Express, by its Trustee in Bankruptcy, C. Orvis Sowerwine, and objects to the admission and moves to strike the motor carrier testimony regarding issues of public convenience and necessity, including related fit, willing and able status of the motor carriers on the grounds that the testimony is (1) totally irrelevant to any issue

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in these consolidated proceedings; and (2) its introduction would expand the issues and unduly prolong these proceedings. In further support of this motion REA Express, Inc. respectfully states as follows:

I.

The Question Of Public Need For Express Service Is Beyond The Scope Of Issues In These Proceedings: The Issues Do Not Involve Questions Of Public Convenience And Necessity

The entire thrust of the involved motor carrier testimony revolves around the question of public need for express service, the extent to which there has been, is and continues to be a need for express service provided by REA Express, Inc., and allegations regarding the willingness and ability of motor carriers of general freight to transport LTL traffic formerly handled by REA Express, Inc. Such evidence is relevant only to a proceeding involving questions of public convenience and necessity such as application for operating authority under Section 210 or Section 212 of the Interstate Commerce Act.

None of the complaints consolidated herein involved questions of public need or public convenience and necessity for the services authorized and performed by REA Express, Inc. None of these complaints have sought the suspension or

revocation of the authorities presently held by or pending upon application to the Commission for REA Express, Inc. The complaint in Docket No. MC-C-8862, Brada Miller Freight System, Inc. v. REXCO, Inc., and REA Express, Inc., is confined to the allegation that "Rexco [sic] and R.E.A. Express, Inc. [sic] have been and are engaged in the interstate transportation of general commodities by motor carrier in ordinary freight service between points in the United States without authority from the Commission in violation of §§203(c) and 206(a)(1) of the Act." The complaint in Docket No. MC-C-8864, Schneider Transport Inc. v. REA Express, Inc., states that it was filed pursuant to §§13, 204(c) and 216(e) and alleges operations without appropriate authority in violation of §§203(c) and 206(a) of the Act, an unlawful transfer of authority [sic] in violation of §212(d), that rates "are unreasonable and non-compensatory in nature and constitute an unfair and destructive competitive practice" without reference to any section of the Act being violated and that the rates "nullify just and reasonable classification required be maintained under §§216(d) and 1(4) of the Act." In Docket No. MC-C-8867, American Trucking Associations, Inc. v. REA Express, Inc., alleges that "REA, [sic] through its REXCO division, is

engaging in interstate operations without an appropriate certificate of public convenience and necessity issued by the Commission authorizing such operations contrary to and in violation of §206(a)(1)" of the Act. In Docket No. MC-C-8874, Associated Truck Lines, Inc., et al. v. REA Express, Inc., the complaint again alleges that the defendant has been and is now engaged in the transportation of general commodities "in violation of §§203(c) and 206(a) of the Act."

As to the consolidated Docket MC-66562 (Sub-2345) (Part No. 181), REA Express, Inc. - Petition of American Trucking Associations, Inc. for Dismissal of Application, and Docket No. MC-66562 (Sub-No. 2308 TA), REA Express, Inc. - Petition of American Trucking Associations, Inc. for Cancellation of Temporary Authority, factual questions or issues as to public need or public convenience and necessity are not properly in issue in those proceedings at this stage. First, REA Express, Inc. and its Trustee have never been served with or supplied a copy of any "Petition of American Trucking Associations, Inc., for Dismissal of Application" in Docket No. MC-66562 (Sub-No, 2345) (Part No. 181). REA and its Trustee are unaware of any such pleading having been filed in Sub No. 2345. Under date of December 1, 1975 the American Trucking Associations, Inc. (ATA) did file a petition in Sub Nos. 2314 and 2308 TA entitled "Petition Seeking Dismissal of the MC-66562 (Sub-2314) Permanent Authority Application and for Cancellation of the

MC-66562 (Sub-No. 2308 TA) Temporary Authority."

The "Petition Seeking Dismissal" filed December 1, 1975 by American Trucking Associations, Inc. in Sub-No. 2314 and Sub-No. 2308 TA was a petition "to dismiss the Sub-2314 permanent authority application for want of prosecution, to cancel the Sub-2308 Temporary Authority granted by order dated June 3, 19768, and to hold such temporary authority as void and of no force and effect." The premise of the petition, as stated in the "Argument" portion of the petition, is definitely restricted to allegations of "lack of action", lack of prosecution and a "failure to meet the requirements of Rule 247(f) of the Special Rules Governing Application for Operating Authority allegedly contemplating the prompt prosecution of such applications." That petition in no way brings in issue the question of the public need or questions as to public convenience and necessity for continued operations by REA Express, Inc.

All of the public need issues, none of which were in the original complaints or petition will be dealt with in the proper proceeding under the proper sections of the act and not dragged in only four working days prior to hearing in an unconscionable attempt to expand the issues herein.

The Trustee has already contracted as of July 27, 1976, with approval of the Bankruptcy Court and full knowledge

of the Interstate Commerce Commission, for the full and proper presentation of shipper testimony as to the need for full spectrum express service in the proper proceedings in support of the joint application of Alltrans Express, U.S.A. and the trustee for (a) under Section 210a(b) for temporary authority for Alltrans to operate the authorities here under attack, (b) under Section 5 for operation of these authorities under long term contract and (c) under Section 207 for prosecution of the pending applications here under attack, all of which applications are presently scheduled to be filed by September 25, 1975.

Clearly, the testimony of the motor carriers herein is directed at nothing more than an attempt to inject into these proceedings issues as to (1) public need for REA's service, (2) where or not public convenience and necessity is, has been, or will be served by the full scope of operations authorized and previously performed by REA Express, Inc. as an express company under both Parts I and II of the Interstate Commerce Act, and (3) the motor carriers' alleged ability fitness and willingess to transport the traffic handled by REA Express, Inc. including its Rexco division.

II.

The Introduction Of The Challenged Motor Carrier Testimony Would Improperly Expand The Issues And Unduly Prolong These Proceedings.

The injection of testimony related to the fitness, willingness and ability of a motor carrier to provide service and the public convenience and necessity with respect to such service will improperly expand the noticed issues and require both cross-examination and appropriate response, thereby unduly prolonging these proceedings.

The attempt by the motor carrier industry to inject this most irrelevant and weightless testimony in public convenience and necessity and related "fit, willing and able" question is most objectionable, particularly in a proceeding where it is the obvious intention of the American Trucking Associations, Inc. and, apparently, a significant portion of their individual members, to take concerted and cooperative action to bring about and guarantee the permanent demise of a full spectrum of express service, specifically the demise and termination of REA Express, Inc. In pursuit of such a goal the Commission must require that the attacking industry be held within the scope of issues posed by the consolidated complaint and petition, and be prevented from using irrelevant, weightless, non-probative testimony related to issues of public convenience and necessity.

Since this proceeding clearly is an attempt to kill REA Express, Inc. and the offering of a full spectrum of express service, this is not a proceeding in which the Commission can allow the admission of irrelevant, objectionable, weightless, non-probative evidence under the guise that such matter can be accepted "for what it is worth" or under the canard that "the objection goes to the weight, not the admissibility of the evidence, the weight being a matter for the Commission to consider."

The mere admission of such testimony would require that the Trustee in Bankruptcy, in order to protect the interest of the estate, present responsive evidence to such irrelevant and non-probative statements. Such a presentation would require the Trustee of REA Express, Inc. to bring together and present in evidence, in a very lengthy and costly proceeding, the testimony of the literally thousands of shippers who believe that they individually and the public in general both need and demand the continuation of a full spectrum express company service and that their needs have <u>not</u> been met through the services of the general freight carriers, or others, whether they be members of the American Trucking Association, its regular common carrier conference, or are represented on the board of the "Conference Board of Governors," or otherwise. In view of the burden that would be cast upon the Trustee to

present such lengthy and voluminous testimony to properly respond to and rebut what is clearly irrelevant, non-probative offerings from the motor carriers and American Trucking Associations, Inc. the admission of the motor carrier testimony would be highly prejudicial in the extreme.

WHEREFORE, REA Express, Inc., C. Orvis Sowerwine, Trustee in Bankruptcy, objects to the identification and introduction into evidence of challenged testimony of the motor carriers.

Dated at Washington, D.C. this 2nd day of September, 1976.

Respectfully submitted,

REA Express, Inc.
C. Orvis Sowerwine, Trustee in Bankruptcy

By: Donelan and Cleary
John M. Cleary
John K. Maser
914 Washington Building
Washington, D.C. 20005

Whitman and Ransom
Donald L. Wallace
522 Fifth Avenue
New York, NY

VOLUME II

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Q Whoever would be required to authorize your appearance here in this proceeding to bring the type of charges that you have brought?

A No.

Q Did you seek approval of anyone within the organization to bring these charges?

Mr. Peterman: I object. I will merely request that counsel recognize that Mr. Johns is appearing through the attorney for the American Trucking Association, myself, and he is appearing on behalf of ATA at my request.

Judge Baldow: Thank you.

Mr. Cleary: Is that a stipulation that there is no other authorization other than counsel's request?

Mr. Peterman: Absolutely.

Q (By Mr. Cleary) The Safety Department of the American Trucking Associations, Inc. is it a part of the regular Common Carrier Conference?

A No, it is a part of the parent organization, American Trucking Associations.

It is a department of ATA, whereas regular Common Carrier Conference is a conference of ATA.

Q Does the Safety Department service all of the conferences, or a number of the conferences of ATA?

A To the extent they want service and need service.

SVR fls

the proper terminology?

A He is on duty not driving.

Q If a driver under the operation is required to go to the consignor's location, and he is there in the vehicle in the driver's seat, or standing watching his vehicle and standing in responsible position, required to watch the vehicle, but he is not physically moving the freight, what is his status?

A He is on duty not driving.

Q Same as if he were loading, right?

A That is correct.

Q Suppose he is with his vehicle in that condition, either loading or just standing there on duty not driving without having to load and you, as the carrier-operator know that he has been there while the loading is going on, but he does not show it on his log; would you call that to his attention? Would you accept that log even though you knew he was at that point and all he has shown is "driving time," he has not shown "On Duty, not Driving," would you accept that log?

A I have got to accept the log he turns in. I cannot make a change in that log. I can ask him for a supplemental log or a statement o put with that.

What Hires is doing is telling their drivers what they should put on the log and that is in effect helping them to falsify the log.

BEST COPY AVAILABLE

Q (By Mr. Cleary) Sir, is it your professional opinion, being the top safety expert of American Trucking Association, that any carrier operating in this country, private, contract, common, agricultural coop, anyone, subject to the Department of Transportation safety regulations, who writes to his driver and says "correct your logs", is violating the Department of Transportation regulations and is subject to prosecution for a criminal violation? Is that your opinion?

A That is not my opinion.

Q Thank you.

A Would you like to know what my opinion is?

Q You are entitled to respond.

A I feel where the company instructs the driver to how to fill out the corrected log, then they may be aiding in falsification.

Q Sir, is it your view that every company cannot hire a driver that shows all qualifications unless they have taken him through a course on filling out driver logs?

A No.

Q I mean, you have a qualified driver. He is a qualified driver, he can work for anyone, because he knows how to fill them out, that is why he is qualified, right?

A Yes, that would be part of it.

Q So it is not the obligation of each company for whom some driver, and particularly an owner operator might work, it is

unlawful, or a violation of the Department of Transportation regulations, for a motor carrier to indicate to a driver what would be expected driving times between points, and therefore what would be anticipated as being reflected in driver logs?

A No, I don't think there would be any problem with that. I couldn't cite you anything. And I think that is what carriers are doing in effect now, before the fact, not after the fact.

Q They do it all the time, they tell the driver how fast he is supposed to get there, don't they?

A Sure.

Q Is that telling him what he is supposed to put in his drivers logs?

A I don't believe so.

Q If the carrier receives a driver log after a trip where they have told the driver what is expected, they expect him to get to the destination in a certain number of hours, and the driver log comes back and it is just outlandish in terms of the number of hours reported, or is obviously incorrect, is it unlawful or improper for them to go back to him and tell him again what they told him before, that this trip should take not more than, and not less than some hours? In other words, "not more than maybe ten, and we wouldn't expect it to be less than seven" unless there is some explanation? Is that improper?

A I think it depends upon how you put it to the driver. If he is led to believe that you want him to show ten hours on the

log, then I think you are leading him to falsification. If he starts searching in his own memory and puts down the exact number of hours it took, then I don't think you have led him to falsification.

Q Sir, it may take me to go back and read the transcript of what you have said here today, because I know you did not say it. I don't think, in what you offered in written form, unless you can remind me and point it out. I don't think you have made a charge that RFA Express, Inc. has led drivers to falsify logs, have you?

A I think they have come very close to it.

Q But in your opinion --

A Where a driver has not shown unloading, they have said "you must show at least one half hour or more unloading", where he has not shown inspection they said "you must show at least one half hour or more".

Now, if they have knowledge that that is what he took, that is one thing, but if the driver finished an inspection in 15 minutes, or in an hour, it seems to me they are in tough shape telling him what to put down.

Q With respect to a driver who is picking up a truck load shipment, and he is on duty, how much time should he record, and in what category, while that shipment is being loaded?

A While it is being loaded for him? He is not involved in the loading?

Q Does it ordinarily go to one consignor?

A Not necessarily, no.

Q What routing instructions are given to a driver prior to the commencement of a movement?

A The driver is instructed to use the interstate highway systems, and that is it.

Q Do you give him any instructions on the lease?

A He is supposed to write it or type it on the manifest, the special instructions.

Q What is the form of those special instructions? Could you give us a couple of examples?

A Just depending on where the shipment is going. Usually interstate highways.

Q What instructions if any have you received from the PEYCO Division regarding the routing of transportation movements?

A Upon initially becoming a PEYCO agent I was instructed by Mr. Don Williams that the trucks would have to use the interstate highway systems. When once they were off the interstate highway systems they should be or would be covered by the A-4 tariff of the joint directory of pick up and delivery limitations.

Q What control do you exercise over a driver after he begins the movement?

A After he begins the movement?

Q Yes sir.

the time in this proceeding.

Judge Beddow: May we have the Bureau's witness?

Mr. Naffpliotis: Let the record show I am now distributing to Court and counsel the letter which I described several minutes earlier.

Judge Beddow: It will be marked exhibit 17.

(Bureau exhibit 17 Counsel Naffpliotis marked for identification.)

Mr. Streeter: Your Honor, may the record reflect this is the first time defendants have received a copy of this.

Mr. Naffpliotis: Pending any questions or objections I move the admission of exhibit 17 into evidence.

Mr. Cleary: Your Honor, I would like to review it. I did not realize this letter might be offered and submitted in evidence.

Judge Beddow: We will take five minutes break.

(Recess)

Judge Beddow: On the record.

Mr. Naffpliotis: Your Honor, I wish to clarify for the record that this letter is not introduced as evidence to prove the truth of the matters asserted therein, rather only as evidence that the Bureau has advised respondents of the matters in fact of law to be asserted in this

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proceeding.

Judge Beddow: With that understanding, Exhibit 17 will be received.

(Bureau Exhibit 17 Counsel Naftiotis received in evidence.)

Mr. Nafpliotis: The Bureau calls Louis Bussolati to the stand.

LOUIS P. BUSSOLATI, JR.

was duly sworn and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Nafpliotis: Would you please state your full name and business address?

A Louis P. Bussolati, Jr., Bureau of Operations, Interstate Commerce Commission, 26 Federal Plaza, Room 1807, New York City, New York 10007.

Q How are you employed?

A As a transportation specialist.

Q Would you please state for the record what your duties entail in that capacity?

A My duties include investigation the status of compliance with the Interstate Commerce Act and the relate Commission rules and regulations. Investigating violations of the Act and the Commission's rules and regulations, and the processing of consumer complaints and inquiries.

Q How long have you been so employed?

A Since October 29, 1972.

Q In the course of your duties as a transportation specialist, were you assigned to conduct an investigation of the operations of the Rexco Division of RHA Express, Inc.?

A Yes.

Q What precipitated your being assigned to conduct this investigation?

A The Commission had received inquiries and complaints and as a matter of routine I was assigned to perform an investigation.

Mr. Nafpliotis: At this time, Your Honor, the Bureau would like to have marked for identification a multi-page, stapled document entitled "Prepared Statement of Louis P. Bussolati, Transportation Specialist," which is accompanied by Appendices A and B.

Judge Beddow: It will be marked Exhibit 18.

(Bureau's Exhibit No. 18, Witness Bussolati, was marked for identification)

Q (By Mr. Nafpliotis) Do you have a copy of the document with attachments which has just been marked for identification?

A Yes, I do.

Q Is it a copy of your prepared statement regarding your recent investigations of the operations of the Pexco division of WWA Express?

A Yes, it is.

Q And with certain changes do you adopt it as such?

A Yes, I do.

Mr. Nafpliotis: Your Honor, to save time I will describe the changes to be made in Mr. Bussolati's statement.

Counsels for REA Express and for the Complainants have already been advised of these changes.

On page 2 of the prepared statement, the last sentence in the first paragraph; the period should be deleted and the sentence should be continued with the following phrase" "and other equipment with drivers under trip-lease to the Rexco Division."

On page 3 in the paragraph marked 4, the last line should read, " injury," rather than "inqury."

On page 10, in the third line, the third word should be "driver."

On page 15, the second paragraph, delete the word "although," and in its place write "according to the logs." Further on in that line delete the words "not available," and replace them with "48 hours."

In the second line of that paragraph, after the comma, insert the word "and." Thus the sentence would read, "According to the logs, the transit time is 48 hours for shipment 55, and the logs indicate," -- so on.

In Appendix A to the prepared statement, on page 7, the shipment marked Number 5, in the column marked "Transit Time," delete the words "driver logs incomplete, and replace them with the number "48."

Q (By Mr. Naifliotis) Mr. Bassolati, is that the extent of the changes which you wish to be made in your statement?

A Yes.

Mr. Nafpliotis: Your Honor, I tender the witness for cross-examination, and pending the completion of his testimony I have the admission into evidence of his prepared statement and accompanying appendices herein marked for identification as Exhibit 18

Mr. Sullivan: Your Honor, I am ready to proceed with cross-examination.

Judge Beddow: Have you discussed the order of cross-examination?

Mr. Cleary, have you any particular feelings on the cross-examination in the order, whether it be conducted first by yourself or by the Complainants?

Mr. Cleary: If Mr. Bussolati has anything here that is relevant to the complaint proceedings, I would suggest that any questions from Mr. Sullivan or other Counsels from that end of the table are obviously in the nature of additional direct, and I would request to be permitted to cross-examine following them.

Mr. Sullivan: I have no objection. I am ready to go.

Judge Beddow: Fine.

CROSS-EXAMINATION

Q (By Mr. Sullivan) I have read your statement here, Mr. Bussolati, and it would appear that you and Mr. Bolo and Mr. Schnorr have spent some time on these; is that true?

PREPARED STATEMENT

Ex. (17)

AUG 4 1978
A-3392

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Donald L. Wallace, Esquire
Whitman & Ransom
522 Fifth Avenue
New York, N.Y. 10036

Re: No. MC-C-8862
Brada Miller Freight System, Inc.
v. REXCO, Inc. and REA Express, Inc.

No. MC-C-8864
Schneider Transport, Inc.
v. REA Express, Inc.

No. MC-C-8867
American Trucking Associations, Inc.
v. REA Express, Inc.

No. MC-C-8874
Associated Truck Lines, Inc. et al.
v. REA Express, Inc.

Dear Mr. Wallace:

This has reference to the above-entitled complaint proceedings concerning the operations of the REXCO Division of REA Express, Inc. By an order of the Interstate Commerce Commission, served on April 27, 1976, the Bureau of Enforcement was directed to participate as a party in each of these proceedings for the purpose of developing the record. This is to inform you of the matters of fact and law to be presented and asserted therein by the Bureau of Enforcement.

The Bureau intends to present evidence relating to the transportation of property by the REXCO Division of REA Express, Inc. beyond the scope of the operating authority of REA Express, Inc. contained in Docket No. MC-66562 and numerous Sub numbers thereunder. Specifically, the Bureau will introduce evidence that the operations being conducted by the REXCO Division are not in express service, as is required by the operating authority of REA Express, Inc. The evidence described herein is derived from an investigation conducted by Transportation Specialists Louis P. Bussolati, Evert L. Bono, and Gayle E. Schroer which covers mainly the operating period from March 1 through March 15, 1976.

Documentation developed during the investigation discloses instances of transportation performed over unauthorized routes and including service to unauthorized points, representative instances of which are described in the attached Appendix A. The underlying documentation which identifies these movements is listed in Appendix B. In addition, the documentation further includes REXCO manifests, driver's logs, fuel receipts, driver's licenses and qualification certifications, and trip lease cover sheets which are used by the REXCO Division as checklists for final settlement with equipment lessors. These unauthorized operations, in violation of Section 206 of the Interstate Commerce Act (49 U.S.C. 306), will demonstrate that the REXCO Division is not conducting regular route operations between authorized points and on firmly established schedules, but rather, operations which are unscheduled and 'call-on-demand'.

Other evidence was developed which demonstrates the failure of the REXCO Division to provide express service in the performance of its operations, representative instances of which are described in Appendix C. The underlying documentation which identifies these movements is listed in Appendix D. This documentation also includes REXCO manifests, driver's logs, fuel receipts, driver's licenses and qualification certifications, and the trip lease cover sheets. The indicated lack of express service is based upon the failure to

use equipment consistent with the performance of express service, substantial interruptions in service during the course of a transportation movement, the failure to furnish drivers with sufficient routing instructions for the proper performance of transportation movements, and the imposition of certain restrictions on service--such as restrictions against certain commodities, or limitations as to volume or distance--which are inconsistent with express service.

As you are aware, the Bureau's copies of the documents herein described were made by I.C.C. investigators from originals found in the files of the REXCO Division. It is therefore requested that you stipulate to the authenticity of the copies which were made by the investigators or, in the alternative, that you make the originals available for introduction into evidence. Otherwise, the Bureau will rely upon its copies as primary evidence. Of course, I would be pleased to meet with you to discuss any mutually agreeable stipulations.

Having presented the above-described evidance, the Bureau of Enforcement will maintain that the transportation performed by the REXCO Division of RSA Express, Inc. is operationally inconsistent with the concept of express service as it has been defined by the Interstate Commerce Commission. Among the precedent cases that the Bureau will assert as law applicable to the instant case, are the cases of:

Railway Exp. Agency, Inc., Determination of Status, 21 M.C.C. 161 (1939). Transportation Activities of Brady Transfer & Storage Co., 47 M.C.C. 23 (1947). Transportation Activities of Arrowhead Freight Lines, Ltd., 63 M.C.C. 573 (1955). Railway Exp. Agency, Inc., Extension--Nashua, N.H., 91 M.C.C. 311 (1962). Freight, All Kinds, L.C.L. Container Charges---U.S.A., 323 I.C.C. 463 (1964). Express Company Terminal Areas, 332 I.C.C. 91 (1967). RSA Express, Inc., Application for Emergency Temporary Authority, 117 M.C.C. 80 (1971).

Of course, the furnishing to you of this information does not preclude the Bureau from asserting any additional matters of fact and law concerning the instant proceedings, which might later come to our attention.

Should the Bureau determine to assert any additional matters, however, you will promptly be advised. Please feel free to contact me if there are any questions concerning the above or this Bureau's participation in the proceedings.

Very truly yours,

Michael N. Nafpliotis
Attorney

Attachments

cc: John M. Cleary
John K. Maser, III
Marcus & Angel

APPENDIX A

NO. DATE	CONSIGNOR ORIGIN	CONSIGNEE DESTINATION	TOTAL CHARGES
1 3-2-76	Mallinckrodt, Inc. Lodi, N.J.	Cob Labs Lakewood, Col.	1316.10
2 3-6-76	Bethlehem Steel Bethlehem, Pa.	Carter Steel Bellefontaine, Ohio	450.87
3 3-15-76	Vick Chemical Friendship, N.C.	Vick Chemical Denver, Col.	1140.00
4 3-8-76	Howmet Corp. Dover, N.J.	General Electric Albuquerque, N.M.	1392.00
5 3-10-76	John Wiley & Sons Somerset, N.J.	PSCA Salt Lake City, Ut.	1444.00
6 3-2-76	Alcoa Alcoa, Tenn.	Romet, Inc. Salt Lake City, Ut.	1316.00
7 3-5-76	Patco Products Grandview, Mo.	Oregon Transfer Co. Portland, Ore.	1405.98
8 3-9-76	Peerless Conveyor Kansas City, Ka.	Holly Sugar Corp. Worland, Wyo.	684.10
9 3-10-76	Stern Can Co. Peabody, Mass.	Minwax Co. Sparks, Nev.	1913.60
10 3-1-76	Carter Products Cranbury, N.J.	S.S. Kresge Sparks, Nev.	1819.68
11 3-5-76	Heil Quaker Corp. Nashville, Tenn.	Johnson Heating Portland, Ore.	1584.00
12 3-20-76	GAF Corp. Gloucester City, N.J.	Knudtnon Lumber Choteau, Mont.	1555.00
13 3-12-76	Combustion Eng. Chattanooga, Tenn.	Utah P. & L. Huntington, Utah	1364.25
14 3-5-76	New Process Steel Healeah, Fla.	Moncrief-Lenoir Houston, Tx.	922.98
15 3-11-76	Vick Chemical Friendship, N.C.	Vick Chemical Denver, Col.	1140.00

APPENDIX B

	SHIPPING ORDER B/L	FREIGHT BBBILL	LEASE AGREEMENT
1.	46009	6068	A-74394
2.	104 33964	6544	A-74869
3.	T 8161	3478	A-37978
4.	1593	6054	A-74380
5.	14689	6109	A-74435
6.	CL 55864	2445	A-30946
7.	2417-2418	4955	A-70929
8.	11666	4950	A-70924
9.	04161	6082	A-74408
10.	76058668420	6080	A-74406
11.	46501784	6627	A-74977
12.	34241/34262	6957	A-75256
13.	(unnumbered)	6630	A-74980
14.	F-51256	5351	A-71251
15.	T-8130	3475	A-37975

APPENDIX C

NO. DATE	CONSIGNOR ORIGIN	CONSIGNEE DESTINATION	TOTAL CHARGES
1 3-1-76	Johns-Manville Manville, N.J.	Industrial First Cleveland, Ohio	364.00
2 3-3-76	Bethlehem Steel Bethlehem, Pa.	Carter Steel Bellefontaine, Ohio	445.42
3 3-8-76	Bethlehem Steel Bethlehem, Pa.	Brown Steel Columbus, Ohio	397.53
4 3-4-76	Proform, Inc. St. Paul, Minn.	Meinerz Cream. Fredericksburg, Iowa	252.80
5 3-5-76	Dibert, B. & R. Amite, La.	Twin City Shipyard St. Paul, Minn.	907.04
6 3 -76	Alumax Ext. Frederick, Md.	Alumax Ext. Plant City, Fla.	702.96
7 3-8-76	Atco Marine Amite, La.	Seatrain Shipbuilding Brooklyn, N.Y.	924.80
8 3-9-76	Proform, Inc. St. Paul, Minn.	Meinerz Cream. Fredericksburg, Iowa	252.80
9 3-8-76	Noranda Aluminum New Madrid, Mo.	Hall Aluminum Sheboygan, Wis.	448.00
10 3-9-76	Proform, Inc. St. Paul, Minn.	Meinerz Cream. Fredericksburg, Iowa	252.80
11 3-9-76	Bethlehem Steel Bethlehem, Pa.	Art Iron Inc. Toledo, Ohio	432.11
12 3-10-76	Bethlehem Steel Sparrow Point, Md.	Worthington Indus. Columbus, Oh.	348.00
13 3-10-76	Bethlehem Steel Bethlehem, Pa.	Brown Steel Columbus, Oh.	401.87
14 3 1-76	Bethlehem Steel Steelton, Pa.	Lefer Forge Jackson, Miss.	421.46
15 3-11-76	Gulf Steel Div. Houston, Tx.	Metal Supply Memphis, Tenn.	456.00
16 3-11-76	Bethlehem Steel Lackawana, N.Y.	Keystone Steel Spring City, Pa.	348.26

APPENDIX C

NO. DATE	CONSIGNOR ORIGIN	CONSIGNEE DESTINATION	TOTAL CHARGES
17 3-11-76	Eckco Fab. Metairie, La.	Ascoa Fintube Pryor, Okla.	513.60
18 3-13-76	Bethlehem Steel Johnstown, Pa.	Ford Motor Sandusky, Oh.	313.41
19 3-15-76	Republic Steel Buffalo, N.Y.	Rex Forge Plantsville, Conn.	378.31
20 3-3-76	Western Publishing Wayne, N.J.	Western Publishing St. Louis, Mo.	668.00
21 3-4-76	Nixon Machinery Knoxville, Tenn.	Joy Mfg. Clairmont, N.H.	668.00
22 3-5-76	Johns-Manville Manville, N.J.	California Corp. Ft. Worth, Tx.	1104.00
-3 3-5-76	Creamette Co. Minneapolis, Minn.	Creamette Co. Cleveland, Oh.	785.72
24 3-9-76	Continental Copper Linden, N.J.	Continental Copper West Jordan, Utah	1453.39
25 3-9-76	Alumax, Inc. Frederick, Md.	Kaiser Aluminum Ravenswood, W. Va.	277.31
26 3-9-76	Buckeys Sugars Ottwa, Ohio	Michaels Bakery Philadelphia, Pa.	453.60
27. 3-10-76	Shell Chemical Pennsauken, N.W.	Gould, Inc. West Allis, Wis.	642.49
28 3-11-76	Apex Int'l Alloys Chicago, Ill.	Hitchcock Indus. Denison, Tx.	632.00
29 3-13-76	Anixter-Pruyan Pine Brook, N.J.	Advance Indus. Sioux City, Iowa	928.00
30 3-15-76	N.J. Zinc Co. Gloucester City, N.J.	Dayton Tire Oklahoma City, Okla.	1005.96
1 3-2-76	Rayette Div. St. Paul, Minn.	Rayette Div. Jersey City, N.J.	876.76

APPENDIX C

NO. DATE	CONSIGNOR ORIGIN	CONSIGNEE DESTINATION	TOTAL CHARGES
32 3-11-76	Conwed, Corp. Cloquet, Minn.	Geisman Seeding Pueblo, Col.	748.00
33 3-12-76	Conwed Corp. Colquet, Minn.	Geisman Seeding Pueblo, Col.	748.00
34 3-15-76	Anixter-Pruzon Pinebrook, N.J.	A-1 Indus. Supply Houston, Tx.	1140.00
35 3-3-76	Sergio Lujan & Co. Laredo, Tx.	Western Electric Omaha, Neb.	784.80
36 3-2-76	N.J. Zinc Co. Palmerton, Pa.	Mueller Brass Port Huron, Mich.	494.30
37 3-3-76	APC Indus. Laredo, Tx.	Western Electric Weco, Neb.	784.80
38 3-8-76	Western Electric Omaha, Neb.	American Util. Laredo, Tx.	784.80
39 3-10-76	APC Indus. Laredo, Tx	Western Electric Weco, Neb.	784.80
40 3-15-76	Western Electric Weco, Neb.	APC Indus. Laredo, Tx.	784.80
41 3-4-76	Ford Motor Co. Nashville, Tenn.	Safelite Div. Denver, Col.	856.11
42 3-1-76	Ford Motor Co. Nashville, Tenn.	Safelite Div. Denver, Col.	892.59
43 3-10-76	Ford Motor Co. Nashville, Tenn.	General Glass Denver, Col.	896.66
44 3-3-76	Dixie Metals Dallas, Tx.	General Battery Greer, S.C.	752.40
45 3-19-76	B.F. Goodrich Avon Lake, Ohio	Thermo Plastics Ft. Worth, Tx.	891.00
46 3-11-76	Upjohn Co. Portage, Mich.	Upjohn Co. Long Island, N.Y.	585.80
47 3-9-76	Wayne Distrib. Wayne, N.J.	Arkansas Book Little Rock, Ark.	976.92

APPENDIX C

NO. DATE	CONSIGNOR ORIGIN	CONSIGNEE DESTINATION	TOTAL CHARGES
48 3-9-76	Bemis Co. Omaha, Neb.	Bemis Co. Minneapolis, Minn.	300.00
49 3-9-76	Diamond Shamrock Houston, Tx.	Diamond Shamrock Sylvester, Ga.	614.50
50 3-8-76	Bemis Co. Omaha, Neb.	Bemis Co. Minneapolis	300.00
51 3-8-76	Continental Copper Linden, N.J.	Hatfield Wire W. Jordan, Utah	1444.00
52 3-1-76	Gerald Metals Jersey City, N.J.	Brush Wellman Elmore, Ohio	452.29
53 3-5-76	Tenn. Forg. Steel Harriman, Tenn	Riverside Indus. Tulsa, Okla.	657.43

APPENDIX D

	SHIPPING ORDER B/L	REXCO WAYBILL	LEASE AGREEMENT
1.	CM 272	3828	A 34778
2.	104-33612	6531	A 74856
3.	104-33777	6540	A 74865
4.	(unnumbered)	5254	A 71149
5.	76-0079	4427	A 35476
6.	00988	7065	A 75416
7.	75-1215	4430	A 35479
8.	(unnumbered)	5260	A 71159
9	7432	4964	A 70955
10.	(unnumbered)	5261	A 71160
11.	104-33989	7455	A 74880
12.	671-4881	7070	A 75421
13.	104-34226	7468	A 74893
14.	213-0171	7157 A	A 75507
15.	39435, 39041	5911	A 71811
16.	508-2069-1	6470	A 74770
17.	8218	4432	A 35481
18.	44-0853	7159	A 75509
19.	503-3056	6498	A 74798
20.	GD 8532	6093 A	A 74419
21	K-10850	2444	A 30945
22.	YS 766	3841	A 34788
23.	15100	5253 A	A 71148

APPENDIX D

	SHIPPING ORDER B/L	REXCO WAYBILL	LEASE AGREEMENT
46.	10992	6703	A 75053
47.	GD 8532	6097	A 74423
48.	5832	3025	A 37515
49.	65 07248 04	5913	A 71813
50.	5818	3024	A 37514
51.	SM 13339	6096	A 74422
52.	(unnumbered)	4312	A 35364
53.	28760	6629	A 74979

APPENDIX D

	SHIPPING ORDER B/L	REXCO WAYBILL	LEASE AGREEMENT
24.	13514	6112	A 74438
25.	01028	7068	A 75419
26.	13056	2961	A 37461
27.	2 668-5587-87	6570	A 74918
28.	005903	3449	A 32041
29.	1467	6954	A 75254
30.	60671	3850	A 34797
31.	SP 310334	5248	A 71143
32	70563	5276	A 71175
33.	70564	5277	A 71176
34.	1417	6095	A 74421
35.	161	3019	A 37510
36.	60690	6521	A 71898
37.	3827	3017	A 37509
38.	149853	3022	A 37512
39.	(unnumbered)	3021	A 37511
40.	149903	3026	A 37516
41.	224011	6625	A 74975
42.	223875	6615	A 74965
43.	NA. 224127	6650	A 74998
44	D-266	4584	A 35573
45.	Y 837098-A	5176	A 74466

EXHIBIT 18

BEFORE THE

INTERSTATE COMMERCE COMMISSION

No. MC-C-8862
BRADA MILLER FREIGHT SYSTEM, INC. v. REXCO, INC., ET AL.

No. MC-C-8864
SCHNEIDER TRANSPORTATION, INC. v. REA EXPRESS, INC.

No. MC-C-8867
AMERICAN TRUCKING ASSOCIATIONS, INC. v. REA EXPRESS, INC.

No. MC-C-8874
ASSOCIATED TRUCK LINES, INC. v. REA EXPRESS, INC.

PREPARED STATEMENT
OF
LOUIS P. BUSSOLATI,
TRANSPORTATION SPECIALIST

Filed by:

Michael N. Nafpliotis,
Attorney
Bureau of Enforcement
Interstate Commerce Commission
Washington, D.C. 20423

Due: August 23, 1976

PREPARED STATEMENT
OF
BUSSOLATI

My name is Louis P. Bussolati and I am a Transportation Specialist with the Bureau of Operations of the Interstate Commerce Commission. I am assigned to the Commission's field office at 26 Federal Plaza, Room 1807, New York, New York 10007. My duties as a Transportation Specialist entail assisting the public in problems with carriers regulated by the Commission, investigations of compliance with the Interstate Commerce Act and related Acts, and investigating allegations of violations of those Acts.

In the course of my dutues, I was instructed to conduct an investigation of the operations of the REXCO Division of REA Express, Inc. Transportation Specialist Evert L. Bono of Newark, New Jersey and Transportation Specialist Gayle E. Schroer of Trenton, New Jersey were assigned to work closely with me in this investigation. Briefly, the investigation included an examination of the transportation performed by REXCO mainly during the period March 1 through March 15, 1976 and interviews with several of the REXCO agents and ex-agents.

In general, the investigation indicates that REXCO conducts operations through its numerous agents, whose responsibility it is to solicit traffic for REXCO and to arrange for the performance of the transportation movements. Each agent receives a commission of 7% on his gross receipts. The transportation itself is performed by owner/operators, AND other equipment with drivers under rent or lease

Documentation and Abstract for the REXCO Div

Almost 700 instances of transportation were examined by Transportation Specialist Bono, Schroer, and myself at REXCO headquarters in Philadelphia during the period May 24 through May 28, 1976. From those instances, the movements which are represented in the accompanying Abstract (Appendix A to this statement) were selected for documentation. In most cases, the documentation for a particular transportation movement consisted of the following:

1. Motor carrier uniform straight bill of lading and shipping order - No REA Express bills of lading were found in the examination of the REXCO files. It should also be noted that these documents do not show a request for express service, although expedited service is indicated in some circumstances.

500

2. REXCO waybill - This document identifies REXCO as a division of REA Express and is initiated by the agent. Space is provided for the date prepared, manifest number, driver, shipper's number, the number of packages, their description, weight, rate and charges. There is space for a signature and date below the printed statement, "Received in good order".

3. REXCO manifest - This is a multi-copy pre-serially numbered form which is initiated by the REXCO agent and includes data necessary to the proper compensation of the lessor.

4. Lease contract - Trip leases are executed by the REXCO agent and the lessor. Paragraph 7 of the contract terms requires that REXCO (the "First Party") will be reimbursed by the lessor for any shortages, loss, damage, or injury to cargo.

5. Daily logs - The logs, along with fuel receipts when available, were examined to determine the route taken during a particular movement.

6. Trip lease cover sheet - This is a checklist used by REXCO to insure that all documents pertinent to a completed movement have been submitted for processing.

In most cases, the documentation obtained during the investigation also includes REA power unit and trailer inspection forms, drivers' operators permits, state permits, vehicle registrations, and driver medical statements.

The shipments which were documented (approximately 10% of those examined) are represented in the Abstract with the following information:

1. REXCO invoice number - The first three digits of the invoice designate the agent who arranged the transportation movement, while the following four digits are the waybill number.

2. Date - Where possible, the date is that which appears on the shipping order.

3. Origin and destination - This information appears on both the waybill and the lease contract.

4. Commodity

5. Actual and rated weights - This information is taken from the REXCO waybill.

6. Transit time - The transit time is taken from the driver logs and is determined from the approximate end of loading to time of arrival at the destination city.

7. Distance - The distance of each movement is taken from the REXCO waybill

8. Routing instructions - The routing instructions for each movement appear in the lease contract as an entry following the printed words, "VIA ROUTE".

For most of the abstracted shipments, there is an additional information column with the heading "ELEMENTS" and subheading X Y Z. This refers to particular characteristics relevant to the nature of express service:

X represents a substantial interruption in service during the course of the transportation. Many of these interruptions, disclosed in the driver logs, were of twenty-four hours or longer. Often, a driver, after beginning a movement, would stop in his hometown--which is revealed in operator permits

and driver certifications included in the documentation--and remain there for a day or more before continuing the movement. Specific examples will be explained later in this statement.

Y represents that a transportation movement followed a route which was not wholly within the operating authority of REA Express. The process by which a particular movement was so characterized is relatively involved and, at this point, should be explained.

We obtained a highway map of the continental United States, with measurements of approximately 41" X 61" and an approximate scale of 45 miles to the inch. The operating authority of REA Express was then plotted and marked on the map in the following sequence:

1. The "Hub system" configuration temporary authority which was granted to REA in No. MC-66562 (Sub-No. 2308/TA)

2. Permanent operating authority represented in the outstanding certificates of REA.

3. Temporary operating authority other than the "Hub" authority.

With the map as a guide, the route of a particular movement could be plotted and marked on a translucent overlay--with points named in the driver logs and fuel receipts as markers. For verification, the legitimacy of a movement which was indicated by the map-overlay process as being unauthorized, was checked against the temporary and permanent operating authority of REA Express. As with the X element, specific examples will be explained later in this statement.

The final element, Z, denotes movements with the use of equipment other than the ordinary van-type equipment, ~~and thus, not typically consistent with the traditional character of express service.~~ STRICKEN In many instances, the documentation itself indicates that other than ordinary van-type equipment was used, often as required by the shipper. In other instances, investigators were advised by shippers that the transportation conducted for them by REXCO required the use of flatbed or open-top. Again, specific examples of this characteristic will be discussed later in this statement.

In addition to the above-described classifications of information in the Abstract, the shipments represented in the Abstract are themselves separated into groups. Shipment numbers 1 through 18 represent movements which all involved a substantial

interruption in service. Shipment numbers 19 through 33 all involve transportation not wholly within the REA operating authority, but many also contain either or both of the other two elements. Similarly, shipment numbers 34 through 54 all involve transportation with other than ordinary van-type equipment, but some of the shipments exhibit substantial interruptions in service during the course of the transportation movement. Although no X, Y, or Z elements are labelled in numbers 55 through 68, these shipments offer additional description of REXCO transportation.

For purposes of illustration, following sections of this statement describe a few from each group of shipments in the Abstract.

Shipments 1 through 18,
substantial interruptions in service

Shipment Number 1 -- a movement from St. Paul, Minnesota to Jersey City, New Jersey --is typical of the shipments represented in this segment of the Abstract. The driver logs show that the movement began in St. Paul at approximately 7:45 a.m. on March 3 and continued normally until reaching Danielsville, Pennsylvania at 7:30 a.m. on March 5. At Danielsville, however, the driver went off duty for 69 hours before resuming

the movement at 4:30 a.m. on March 8 and driving for two hours to Jersey City. A medical certificate and operator's permit indicate that Danielsville is the driver's home.

In shipment Number 5, driver logs show that the equipment was leased to REXCO and loaded in Knoxville, Tennessee at approximately 2:00 p.m. on March 5. The driver remained off duty, however, for approximately 28 hours after loading and the movement did not begin until 6:30 p.m. on March 6. The medical certificate and operator's license indicate that Knoxville is the driver's home.

Shipment Number 11 was loaded in Buckeystown, Maryland at 9:30 a.m. on March 9. After driving for 1½ hours, the driver went off duty at home for almost three weeks before finally reaching his destination on March 30. As may be seen from the Abstract's listing of transit time and distance for Shipment Number 11, this movement in express service moved at an average of less than one mile per hour.

Shipment Number 13 did not result from the driver's dereliction of duty, but rather from equipment failure.

The logs show that, during the course of the movement, there was a break down in Philadelphia--REXCO's headquarters city--and the driver remained there for 77 hours. The documentation does not indicate that any substitute equipment was provided for continuation of the movement.

Finally, Shipment Number 16 represents a movement from Pinebrook, New Jersey to Sioux City, Iowa during which the driver stopped at home for 38 hours. It should be noted that on the shipping order for this movement, just above and to the left of the driver's signature, the word "RUSH" is written in capital letters.

Shipments 19 through 33,
unauthorized routes

Shipment Number 19, the first in this group, represents a movement from Cranbury, New Jersey to Sparks, Nevada. Documentation shows the transportation proceeding normally from Cranbury to Dallas, Texas. From there, however, the logs describe a southern route to Sparks via Las Vegas while the fuel receipts indicate a northern route through Amarillo, Texas and Lamar, Colorado up to U.S. Highway I-80. In either case, our examination of REA operating authority indicates that it

is insufficient to complete the movement from Dallas to Sparks.

Shipment Number 27 represents a movement from Grandview, Missouri to Portland, Oregon. The driver logs place the vehicle in Kemmerer, Wyoming (on U.S. Highway 30N) at 8:00 a.m. on March 7, four hours later, the vehicle is almost 170 miles away in Pocatello, Idaho -- a point which the REA operating authority cannot reach from Kemmerer. The same problem exists in this movement for transportation between Ontario, Oregon and Pendelton, Oregon--approximately 170 miles apart along U.S. Highway I-80.

In Shipment No. 33 -- representing a movement between Gloucester City, New Jersey and Choteau, Montana--driver logs place the vehicle on an unauthorized segment of U.S. Highway I-80 in Pennsylvania which is approximately 150 miles in length. Further west, entry in the driver log of an off-duty stop in Grassrange, Montana (on state highway 20) places the vehicle in the middle of an unauthorized length of highway--between Miles City and Great Falls, Montana--which stretches almost 300 miles.

Shipments 34 through 54,
Use of other than ordinary van-type equipment

The first shipment in this group represents the transportation of rolls of paper or sheathing for Johns-Manville Products Corporation. The shipping order indicates that a 40-foot flatbed, for side unlaoding, will be required. The state vehicle registration certificate for the equipment described in the lease contract indicates that a flat was indeed used. It should also be noted that 14 of the approximately 37 hours of transit time for this movement were spent with the driver off duty in his hometown of Piscataway, New Jersey.

The REXCO manifest for Shipment Number 42 contains the notation, "TARP AS PER SHIPPERS INSTRUCTION", for the transportation of aluminum pig foundry in bundles. Such an instruction would be unusual if the movement could be performed with van-type equipment but, as shown by the state registration, flatbed equipment was used. During the course of the movement, the driver spent 10½ hours off duty in his hometown of Wheaton, Illinois.

The shipping order in Shipment Number 48 specifies that this shipment of steel strip and sheets must be tarped. The notation on the REXCO manifest that, "All material /was/ received soaking wet from rain" indicates that van-type equipment was not used. Here, too, there was a substantial interruption in the movement when the driver went off duty for a period of 62 hours.

Shipments 55 through 68, regular routes

The shipments represented in this group are reiterative of Shipments 1 through 54, in that the routing instructions which are entered onto the lease contract are clearly insufficient to inform the driver of the authorized regular route between origin and destination. In most instances, the instructions entered on the lease contract consisted only of "Regular Routes Direct" and "REXCO Direct". Our investigation did not reveal that any additional routing instructions were furnished to the driver.

Shipment Numbers 55, 56, and 57 -- representing transportation movements of glass from the Ford Motor Company in Nashville, Tennessee to Denver, Colorado which were all routed "Direct" -- illustrate that the route to

be taken between origin and destination is based upon driver discretion. The driver logs indicate that each shipment reached Denver via U.S. Highway I-70 from St. Louis, Missouri. However, each shipment moved differently from Nashville to St. Louis. Assuming that movement was performed along an authorized route:

The logs in Shipment 55 indicate that, five hours after leaving Nashville, the driver reached Centralia, Illinois--approximately 220 straight-line miles away. This suggests that the movement followed a relatively direct route north from Nashville along U.S. Highway 41 to Evansville, Indiana and then west via U.S. Highway 45 to Centralia--a trip of approximately 250 miles. From Centralia, the driver could pick up U.S. I-70 near St. Louis and, in fact, the logs place him at Wentzville, Missouri-on I-70 just west of St. Louis.

In Shipment 56, the logs indicate a more southernly route from Nashville through Paducah, Kentucky and Perryville, Missouri. This suggests a movement from Nashville along U.S. Highway I-24 past Paducah. In that area, the driver picked up U.S. Highway I-55 to go north past Perryville and to I-70, where the log next places him.

The driver log in Shipment 57 indicates a movement from Nashville to Franklin, Kentucky--which is in a northeasternly direction from Nashville. From Franklin, the logs show a four hour drive to Evansville where the driver went off duty for 58 hours. Oddly enough, a fuel receipt places the driver near his hometown of Ashland, Kentucky--almost 250 air miles east of Evansville--near the end of the off duty period. The logs, however, show the driver on duty again in Evansville and proceeding west to St. Louis.

~~Although~~ According to the logs, the transit time is ~~not available~~ 48 hours for Shipment 55, and the logs indicate that Shipments 56 and 57 required 70 and 142 hours, respectively. Variances not quite as drastic for identical movements may be seen by comparing Shipments 61 and 63 and Shipments 66 and 67. Elsewhere in the Abstract, your attention is directed to a comparison of the transit times in the following examples:

Shipments 4, 8, and 17--in which the time required to travel the 1067 miles between Laredo, Texas and Omaha (Weco), Nebraska was 110, 36, and 84½ hours, respectively.

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Shipments 30 and 32--in which the time required to travel between Friendship, North Carolina and Denver, Colorado was 84½ and 58 hours, respectively.

Shipments 41 and 43--in which the time to travel between St. Paul Minnesota and Fredericksburgh, Iowa was 23½ and 3½ hours, respectively

Interviews

In addition to an examination of REXCO documents, the investigation included attempted interviews with REXCO agents. Some agents either refused to sign written representation of their interviews with an investigator or refused an interview entirely, claiming that they had received instructions from REXCO not to sign any statements. Attached as Appendix B is a copy of a memorandum from REXCO (presumably by Mr. Donald W. Williams, General Manager) which was obtained from some agents. In addition to advising that no statements of any kind should be signed, the memorandum instructs that REXCO should be contacted immediately in the event of a visit by I.C.C. personnel.

Altogether, we received three signed statements from agents and four from ex-agents. In addition, we received six statements from agents who refused to sign them. Basically, the information obtained from these interviews was that there is no written agency agreement which defines the relationship between REXCO and one of its agents. Rather, it is understood that an agent will solicit traffic for the REXCO Division and arrange for the performance of transportation on leased equipment. The agent's compensation is a commission of seven per cent on the gross revenues of traffic which he arranges.

Agents were not aware of instructions from REXCO regarding the routing of traffic and did not possess copies of the operating authority of REA Express, Inc. Moreover, REXCO agents do not arrange the transportation movements pursuant to a published schedule. Instead, service is provided on a "call-on-demand" basis and transportation movements generally proceed from one shipper to one consignee.

The interviews further indicate that, in general, REXCO agents do not actively solicit less-than-truckload traffic.

This indication appears to be confirmed by the average weight of 35,000 to 35,500 pounds per shipment for the almost 700 shipments examined during our investigation. In addition, from approximately 6,000 REXCO freight bills screened during the investigation, only seventeen were discovered which showed the movement of freight in the 3,700 pound range and under.

Summary

Based upon the information derived from the above-described investigation, operations of the REXCO Division include the performance of transportation which indicates:

1. substantial and operationally unnecessary interruptions in service during the course of the movement

2. movements along routes not wholly within the operating authority of REA Express, Inc.

3. movements with the use of equipment other than the ordinary van-type equipment

4. widely varying routes and transit times in separate transportation movements between a given origin and destination

5. the providing of service on an unscheduled, "call-on-demand" basis

6. emphasis upon the handling of volume shipments

Respectfully submitted,

L P Bussolati

Louis P. Bussolati,
Transportation Specialist
Bureau of Operations
Interstate Commerce Commission

Date: 8/19/46

ABSTRACT

OF

SIXTY-EIGHT SHIPMENTS DOCUMENTED FROM TRANSPORTATION PERFORMED BY THE REXCO DIVISION OF REA EXPRESS, INC. MAINLY DURING THE PERIOD MARCH 1 THROUGH MARCH 15, 1976.

"ELEMENTS" CODE:

X REPRESENTS A SUBSTANTIAL INTERRUPTION IN SERVICE DURING THE COURSE OF THE MOVEMENT.

Y REPRESENTS THAT A TRANSPORTATION MOVEMENT FOLLOWED A ROUTE WHICH WAS NOT WHOLLY WITHIN THE OPERATING AUTHORITY OF REA EXPRESS, INC.

Z DENOTES MOVEMENTS WITH THE USE OF EQUIPMENT OTHER THAN THE ORDINARY VAN-TYPE EQUIPMENT.

Shpmt. No.	Invoice Number	Date	Origin	Destination	Commodity
1	409-5248	3 2 76	St. Paul, Minn.	Jersey City, N. J.	Preps & Pallets
2	421-3019	3 3 76	Laredo, Tx.	Omaha, Neb.	Wire Clamps
3	413-6093	3 3 76	Wayne, N. J.	St. Louis, Mo.	Books
4	421-3017	3 3 76	Laredo, Tx.	Weco, Neb.	Connec-tors
5	431-2444	3 4 76	Knoxville, Tenn.	Clairmont, N.H.	1 Compressor 1 Drill
6	440-3841	3 5 76	Manville, N. J.	Ft. Worth, Tx.	Siding
7	409-5253	3 5 76	Minneap., Minn.	Cheektowaga, N.Y.	Noodles
8	421-3022	3 8 76	Omaha, Neb.	Laredo, Tx.	Cable Terminals
9	413-6095	3 8 76	Pine Brook, N. J.	Houston, Tx.	Wire Rope
10	413-6112	3 9 76	Linden, N. J.	W. Jordan, Utah	Dry Blend Compound
11	428-7068	3 9 76	Frederick, Md.	Ravenswood, W. Va.	Aluminum Slabs
12	419-2961	3 9 76	Ottawa, Ohio	Philadelphia, Pa.	Beet Sugar
13	441-6570	3 10 76	Pennsauken, N. J.	W. Allis, Wisc.	Plastic

Weight Actual	Weight Rated	Transit Time (hrs)	Distance (miles)	Routing Instructions	Elements Interchange X	Rail Y	Flats Z
40970	40970	118½	1182	—	✓		
19485	24000	10~	1067	REXCO DIRECT RETURN	✓		
29840	40000	65½	556	REG. ROUTES DIRECT	✓		
17955	24000	110	1067	REXCO DIRECT & RETURN	✓		
		26.1					
23815	40000	67	929	DIRECT	✓		
31195	40000	110	1548	REXCO DIV.	✓		
41959	41959	118½	933	CLEVELAND, OHIO	✓		
20185	24000	36	1067	REXCO DIRECT & RETURN	✓		
39200	40000	LOGS INCOMPLETE	1590	REXCO ROUTED DIRECT	✓		
40260	40260	139½	2137	REGULAR ROUTES DIRECT	✓		
41390	41390	505	302	REXCO ROUTES	✓		
42000	42000	61½	532	DIRECT	✓		
40480	40480	150	828	REGULAR	✓		

	Shpmt. No.	Invoice Number	Date	Origin	Destination	Commodity
	14	445-3449	3 11 76	Chicago, Ill.	Denison, Tx.	Ingots
	15	440-3850	3 11 76	Gloucester City, N.J.	Oklahoma City, Okla.	Titanium Dioxide
	16	440-6954	3 13 76	Pine Brook, N.J.	Sioux City, Iowa	Wire Rope
	17	421-3027	3 17 76	Laredo, Tx.	Omaha, Neb.	Containers
13 14 15	18	421-3021	3 10 76	Laredo, Tex.	Weco, Neb.	Electrical Equip.
16 17 18 19 20						
21 22 23 24 25						

WEIGHT ACTUAL	WEIGHT RATED	TRANSIT TIME (HRS.)	DISTANCE (MILES)	ROUTING INSTRUCTIONS	ELEMENTS X	ELEMENTS Y	ELEMENTS Z
37978	40000	40	NOT SHOWN	REGULAR ROUTE DIRECT	✓		
40400	40400	81½	1376	REXCO DIV.	✓		
39470	40000	83½	1254	REXCO DIV.	✓		
24165	NOT SHOWN	84½	1067	REXCO DIRECT & RETURN	✓		
17730	24000	109	1067	REXCO DIRECT & RETURN	✓		

	Shpmt. No.	Invoice Number	Date	Origin	Destination	Commodity
	19	413-6080	3 1 76	Cranbury, N.J.	Sparks, Nev.	Toilet Preps.
	20 ✓	413-6068	3 2 76	Lodi, N.J.	Lakewood, Col.	Sodium Acetate
	21 ✓	413-6054	3 2 76	Dover, N.J.	Albuquerque, N.M.	Metal Drums
	22 ✓	431-2445	3 2 76	Alcoa, Tenn.	Salt Lake City, Utah	Roof Sheet
	23 ✓	416-4950	3 3 76	Kansas City, Kansas	Worland, Wyo.	Conveyors
	24 ✓	413-6082	3 4 76	Peabody, Mass.	Sparks, Nev.	Plugs
	25	450-5351	3 5 76	Hialeah, Fla.	Houston, Tx.	Steel Coils
	26 ✓	423-6627	3 5 76	Nashville, Tenn.	Portland, Ore.	Air Cooler Furnaces
	27 ✓	416-4955	3 5 76	Grandview, Mo.	Portland, Ore.	Bread Mak Compound
	28 ✓	443-6544	3 6 76	Bethlehem, Pa.	Bellefontaine, Ohio	Steel Beams
	29	413-6109	3 10 76	Somerset, N.J.	Salt Lake City Utah	Books
	30	429-3475	3 11 76	Friendship. N.C.	Denver, Col.	Toilet Preps.
	31	424-6630	3 12 76	Chattanooga, Tenn.	Huntington, Utah.	Steel Boile Parts

Weight Actual	Weight Rated	Transit Time (Hrs.)	Distance (Miles)	Routing Instructions	Elements X	Elements Y	Elements Z
40800	40800	Logs Not Applicable	2675	Regular Routes Direct	✓	✓	
41000	41000	71½	1762	Regular Routes Direct		✓	
32330	40000	129	1937	Regular Routes Direct	✓	✓	
25310	40000	146½	1823	Direct	✓	✓	✓
24000	24000	55½	944	Direct		✓	
16320	32000	143	2871	Rexco Routed Direct	✓	✓	
43130	43130	89	1185	Reg. Route Direct	✓	✓	✓
13530	16000	224½	2359	Direct	✓	✓	
42735	42735	117	1824	Regular Rexco Route Direct	✓	✓	
42538	42538	75	503	Rexco Rtes Direct	✓	✓	✓
40000	40000	136	2149	Regular Routes Direct	✓	✓	
39897	40000	84½	1576	Rexco Direct		✓	
42500	42500	110	1764	Direct	✓	✓	

	SHIPMT. NO.	INVOICE NUMBER	DATE	ORIGIN	DESTINATION	COMMODITY
	32	429-3478	3 15 76	FRIENDSHIP, N.C.	DENVER, COL.	MEDICINE
	33 ✓	440-6957	3 20 76	GLOUCESTER CITY, N.J.	CHOTEAU, MONT.	VINYL SIDING
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WEIGHT ACTUAL	WEIGHT RATED	TRANSIT TIME (HRS)	DISTANCE (MILES)	ROUTING INSTRUCTIONS	ELEMENTS X	ELEMENTS Y	ELEMENTS Z
38000	38000	58	1576	REXCO DIRECT		✓	
30434	40000	112½	2254	REXCO DIV	✓	✓	

	SHPMT. No.	INVOICE NUMBER	DATE	ORIGIN	DESTINATION	COMMOD
	34	440-3828	3 1 76	MANVILLE, N.J.	CLEVELAND, OHIO	PAPER SHEATHIN
	35	443-6531	3 3 76	BETHLEHEM, PA.	BELLEFONTAINE, OHIO	STEEL BEAM
	36	443-6540	3 4 76	BETHLEHEM, PA.	COLUMBUS, OHIO	BEAMS CHANN
	37	409-5254	3 4 76	ST. PAUL, MINN.	FREDERICKS-BURG, IOWA	FRP ARCHES
	38	415-4427	3 5 76	AMITE, LA.	ST. PAUL, MINN.	STEEL CASTING
	39	428-7065	3 5 76	FREDERICK, MD.	PLANT CITY, FLA.	SLABS INGOT
	40	415-4430	3 8 76	AMITE, LA.	BROOKLYN, N.Y.	STEEL CASTING
	41	409-5260	3 8 76	ST. PAUL, MINN.	FREDERICKS-BURG, IOWA	FRP ARCHE
	42	446-4964	3 8 76	NEW MADRID MO.	SHEBOYGAN, WISC.	ALUMINUM FOUNDRY
	43	409-5261	3 9 76	ST. PAUL, MINN.	FREDERICKS-BURG, IOWA	FRP ARCHE
	44	443-7455	3 9 76	BETHLEHEM, PA.	TOLEDO, OHIO	BEAMS CHANNEL
	45	428-7070	3 10 76	SPARROWS PT. MD.	COLUMBUS, OHIO	COIL STA SHEETS
	46	443-7468	3 10 76	BETHLEHEM, PA.	COLUMBUS, OHIO	BEAM ANGLE

BEST COPY AVAILABLE

TY	WEIGHT ACTUAL	WEIGHT RATED	TRANSIT TIME (HRS)	DISTANCE (MILES)	ROUTING INSTRUCTIONS	ELEMENTS X	ELEMENTS Y	ELEMENTS Z
	27600	40000	37	428	REXCO DIV.	✓		✓
G	42021	42021	111 1/2	503	REXCO ROUTES DIRECT	✓		✓
, ELS	42290	42290	82	448	REXCO ROUTES DIRECT	✓		✓
	2000	32000	46 1/2	191	—	✓		✓
S	42385	42385	70	1167	REGULAR ROUTES DIRECT	✓		✓
S	41109	41109	62	935	REXCO ROUTES	✓		✓
9	27405	32000	47	1294	REGULAR ROUTES DIRECT			✓
S	2000	32000	23 1/2	191	—	✓		✓
PIG	39759	40000	36	550	REGULAR ROUTES DIRECT	✓		✓
S	NOT INDICATED	32000	3 1/2	191	—			✓
S	42364	42364	140 1/2	490	REXCO ROUTES DIRECT	✓		✓
EL	14800	40000	48	406	REXCO ROUTES	✓		✓
S, S	42752	42752	116 1/2	448	REXCO ROUTES DIRECT	✓		✓

	Shipmt. No.	Invoice Number	Date	Origin	Destination	Commodity
	47	406-7157	3 11 76	Steelton, Pa.	Jackson, Miss.	Steel Billets
	48	439-5911	3 11 76	Houston, Tx.	Memphis, Tenn.	Steel Strip & Sheets
	49	432-6470	3 11 76	Lackawanna, N.Y.	Spring City, Pa.	Steel Bars
	50	415-4432	3 11 76	Metairie, La.	Pryor, Okla.	Steel Pipe
	51	406-7159	3 13 76	Johnstown, Pa.	Sandusky, Ohio	Steel Bars
	52	432-6498	3 15 76	Buffalo, N.Y.	Plantsville, Conn.	Steel Bars
	53	443-6521	3 2 76	Palmerton, Pa.	Port Huron, Mich.	Slab Zinc.
	54	-4584	3 3 76	Dallas, Tex.	Greer, S.C.	Lead

WEIGHT ACTUAL	WEIGHT RATED	TRANSIT TIME (HRS).	DISTANCE (MILES)	ROUTING INSTRUCTIONS	ELEMENTS X	ELEMENTS Y	ELEMENTS Z
41320	41320	10	486	REGULAR ROUTES INDICATED			✓
38470	40000	86½	561	REGULAR ROUTES	✓		✓
49751	49751	10	325	DIRECT			✓
6625	24000	26½	650	REGULAR ROUTES DIRECT			✓
48970	48970	46½	242	REGULAR ROUTES INDICATED	✓		✓
45580	45580	29½	390	DIRECT			✓
41518	41518	24½	597	TEXCO ROUTES DIRECT			✓
44000	44000	25	944	REGULAR			✓

	SHPMT. No.	INVOICE NUMBER	DATE	ORIGIN	DESTINATION	COMMODITY
1	55	#23-6615	3 / 76	NASHVILLE, TENN.	DENVER, COL.	GLASS
4	56	#23-6625	3 4 76	NASHVILLE, TENN.	DENVER, COL.	GLASS
7	57	#23-6650	3 10 76	NASHVILLE, TENN.	DENVER, COL.	GLASS
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WEIGHT ACTUAL	WEIGHT RATED	TRANSIT TIME (HRS)	DISTANCE (MILES)	ROUTING INSTRUCTIONS
41170	41170	~~[illegible] 2005 INCOMPLETE~~ 48	1156	DIRECT
40050	40050	70	1156	DIRECT
41900	41900	142	1156	DIRECT

	SHPMT. No.	INVOICE NUMBER	DATE	ORIGIN	DESTINATION	COMMODITY
	58	402-4312	3 1 76	JERSEY CITY, N. J.	ELMORE, OHIO	COPPER INGOTS
	59	424-6629	3 5 76	HARRIMAN, TENN.	TULSA, OKLA.	IRON OR STEEL ANGLES
	60	413-6096	3 8 76	LINDEN, N. J.	W. JORDAN UTAH	DRY BLEND COMPOUND
	61	4210-3024	3 8 76	OMAHA, NEB.	MINNEAPOLIS, MINN.	PAPER BAGS
	62	439-5913	3 9 76	HOUSTON, TX.	SYLVESTER, GA.	WEED KILLING COMPOUND
	63	421-3025	3 9 76	OMAHA, NEB.	MINNEAPOLIS, MINN.	PAPER BAGS
	64	413-6097	3 9 76	WAYNE, N.J.	LITTLE ROCK, ARK.	BOOKS
	65	405-6703	3 11 76	PORTAGE, MICH.	LONG ISLAND, N.Y.	DRUGS OR MEDICINE
	66	409-5276	3 11 76	CLOQUET, MINN.	PUEBLO, COL.	WOOL BLANKETS
	67	409-5277	3 12 76	CLOQUET, MINN.	PUEBLO, COL.	WOOL BLANKETS
	68	437-5176	3 19 76	AVON LAKE, OHIO	FT. WORTH, TX.	PLASTIC MATERIALS

Weight Actual	Weight Rated	Transit Time (Hrs.)	Distance (Miles)	Routing Instructions
41879	41879	25	538	REGULAR
45655	45655	58	747	HARRIMAN, TENN.
38360	40000	NO LOGS	2137	REGULAR ROUTED DIRECT
30657	40000	20½	357	REXCO DIRECT
41520	41520	25½	768	REGULAR ROUTES DIRECT
38713	40000	17½	357	REXCO DIRECT
40600	40600	95	1279	REGULAR ROUTED DIRECT
32925	36000	28	719	REGULAR ROUTE DIRECT
28950	40000	47	1045	—
30000	40000	55	1045	—
31075	40000	NO LOGS	1161	REGULAR ROUTES DIRECT

- APPENDIX B -

REXCO
a division of REA Express

8001 ROOSEVELT BLVD
SUITE 102
PHILADELPHIA, PA. 1915
(215) 331-4000

June 8, 1976

If representatives of the Interstate Commerce Commision visit you they are to be treated with all courtesy. They have the lawful right to examine your REXCO records and you must so allow them.

If such representative seeks to ask a prepared list of questions or such other questions which require definitive answers as to operating authority, etc. you are to call the writer at once. You are to sign no statements of any kind unless previously approved by counsel for the Trustee.

ıould I.C.C. personnel visit you, call me immediately.

DWW

Exhibit 19-A

TO:

XEXCO 8001 Roosevelt Blvd.
Philadelphia, Pa. 19152
(215) 332-0230
division of REA Express

Invoice No.	409-5262	Waybill No.	5262
Date	3-9-76	Shipper No.	21-27233
Owner	E.A. Olmsted	Item No.	580
Driver	R. Taylor	Miles	1201
Date Payment Due	4-14-76 d		

Shipper

Hoerner Waldorf Corp.
P.O. Box 3260
St. Paul, Minn.

Consignee

Grief Bros. Corp.
2503 NE 33rd St.
Fort Worth, Tx. 76111

TERMS

THE RULES AND REGULATIONS OF THE INTERSTATE COMMERCE COMMISSION GOVERNING THE SETTLEMENT OF RATES AND CHARGES OF CARRIERS BY EXPRESS REQUIRE THAT THIS BILL BE PAID WITHIN SEVEN DAYS FROM DATE RENDERED, NOT INCLUDING SATURDAYS, SUNDAYS AND LEGAL HOLIDAYS.

No.	Pkgs.	Description	Weight	Rate	Charges
	22	Boxes Fibreboard as	36,560 40,000	2.22	888.00
		s/o St. Louis, Mo.			35.00
					923.00
					Collect
		Remit This Amount →			923.00

ISSUING OFFICE

1528

REXCO

a division of REA Express

8001 ROOSEVELT BLVD.
SUITE 102
PHILADELPHIA, PA. 19152
(215) 332-0230

Origin Station St. Paul MN 409

Origin Date 3-9-76
Manifest No. 5262
Lease No. 71161

All Documents listed below must be complete before final settlement can be made. Documents are to be checked off in the column at left.

- ☑ 1. Manifest (White and Yellow copies)
- ☑ 2. Trip Lease (White and Yellow copies)
- ☑ 3. Shipping Order copy of Bill of Lading
- ☑ 4. Waybill (White, Pink and Blue Copies)
- 5. Photostats of:
  - ☑ Driver's license
  - ☑ Medical Examiner's Certificate
  - ☑ Certification of Road Test
  - ☑ Certification of Written Test
  - ☑ Tractor Registration
  - ☑ Trailer Registration
- ☑ 6. Pre-Trip Inspection, Power Unit
- ☑ 7. Pre-Trip Inspection, Trailer
- ☑ 8. Post Trip Inspection, Power Unit
- ☑ 9. Post Trip Inspection, Trailer
- ☑ 10. Safety Inspection Report, Power Unit
- ☑ 11. Safety Inspection Report, Trailer
- ☑ 12. Logs
- ☐ 13. Fuel Receipts
- ☑ 14. Cut Out of Placards with Placard Numbers

PAID
APR 30 1976
30197

1 day

Date Terminal Papers Rec'd 3/12/76
Date Driver's Papers Rec'd 3/29/76
Date Processing Completed and passed to Acct's Payable 4/28 Ck. # _____
Remarks _____

DK CS 4/27
Auditing Supervisor

2

REXCO

a division of REA Express

8001 ROOSEVELT BLVD.
SUITE 102
PHILADELPHIA, PA. 19152
(215) 332-0230

4-9-76

Date

Origin Station

Manifest No.

Trip Lease No.

Dear Owner Operator:

We are unable to process the trip identified above for final payment due to the fact that the documents which you have forwarded to us were incomplete. The missing item(s) are indicated below by circle.

1. Trip Lease (Yellow Copy)
2. Shipping Order
3. Waybill (White & Pink Copies)
4. Photostats of:
   - Driver's License
   - Medical Examiner's Certificate
   - Certification of Road Test
   - Certification of Written Test
   - Tractor Registration
   - Trailer Registration
5. Post Trip Inspection Tractor
6. Post Trip Inspection Trailer
7. Logs
8. Fuel Receipts
9. Cut-out of Placards with Placard Number

Please forward the missing document(s) as soon as possible as we are anxious to pay this item at the earliest possible date.

CC: Origin Station

Auditing Supervisor

THIS MEMORANDUM is an acknowledgment that a Bill of Lading has been issued and is not the Original Bill of Lading, nor a copy or duplicate, covering the property named herein, and is intended solely for filing as record.

RECEIVED subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the Original Bill of Lading.

5262-
71161 3

From HOERNER WALDORF CORP ATION

BEST COPY AVAILABLE

The carrier (the word carrier being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its route, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property, over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the terms and conditions of the Uniform Domestic Straight Bill of Lading set forth (1) in Uniform Freight Classification in effect on the date hereof, if this is a rail or a rail-water shipment, or (2) in the applicable motor carrier classification or tariffs if this is a motor carrier shipment.

Shipper hereby certifies that he is familiar with all the rules and conditions of the said bill of lading, including those on the back thereof, set forth in the classification or tariff which governs the transportation of this shipment, and the said terms and conditions are hereby agreed to by the shipper and accepted for himself and his assigns.

AT		SHIPPER'S NO.	AGENT'S NO.	DATE
P.O. BOX 3260 ST. PAUL, MINNESOTA 55114		21 - 27233		3-4 76

CONSIGNED TO (Mail or street address of consignee—For purposes of notification only.)

CAMCO LOADS CORP
2503 - NE 33RD ST.
FORT WORTH, TEXAS

2335-4
2335-4

302510

BILLED APR 5 1976

ROUTE	DELIVERING CARRIER	IF PREPAID WRITE PREPAID	CAR INITIAL	CAR NO.	CAR SEAL NUMBER
CPU CPU					

DO NOT WRITE IN THIS SPACE

VOUCHER NO.

COR	COMMODITY DESCRIPTION	CODE	COMMODITY DESCRIPTION
01	Bottle or Can Carrying Cartons or Containers, other than corrugated, flat, folded or set up	09	Pulpboard or fibreboard NOIBN, fibre content not less than 80% woodpulp, waste paper or mixture thereof, Corrugated
07	Boxes, Fibreboard, corrugated folded flat	10	Pulpboard or fibreboard NOIBN, fibre content not less than 80% woodpulp, waste paper or mixture thereof, not corrugated or indented
03	Boxes, Fibreboard, other than corrugated, folded flat	11	Woodpulp and Ground woodpulp
04	Rugs, NOI	12	Waste or Scrap Paper, not sensitized, machine pressed
05	Bags, plastic, flat, with tube or spouts	13	Machinery NOI
06	Pillars, Partitions or Wrappers NOI Fibreboard corrugated folded flat	14	Rollers, Iron or Steel, not engraved nor etched, covered or not covered, old worn out
07	Pillars, Partitions or Wrappers NOI, Fibreboard other than corrugated folded flat	15	Misc
08	Store Display Racks or Stands Fibreboard K D flat or folded flat	16	Misc

Subject to Section 7 of Conditions of applicable bill of lading, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement.

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

Collect

(Signature of Consignor)

Received $ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

Per
(The signature here acknowledges only the amount prepaid.)

Charges Advanced

$

PKGS.	BOXES	CASES	BAGS	BALES	COMAL CODE	KIND OF PACKAGE, DESCRIPTION OF ARTICLES, SPECIAL MARKS AND EXCEPTIONS, FOR ITEM NOT LISTED ABOVE	WEIGHT (SUBJECT TO COR.)	CLASS OR RATE	CK COL.
22		X			3		36560 25440		
						DRIVER- CALL THIS #3 COPY	HS 40M	222	
		1201	Mil.			AND LEAVE IT ON THE S/O COUNTER PLEASE!	ST. Louis Mo —	588.00 35.00	
		(580)						923.00	

If fibre boxes used for this shipment conform to the specifications set forth in the box maker's certificate thereon and all other requirements of the Uniform Freight Classification.

If Shipper's imprint in lieu of stamp, not a part of bill of lading approved by the Interstate Commerce Commission.

If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

NOTE: Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

COPY

HOERNER WALDORF CORP.
General Offices
St. Paul, Minnesota 55101

When forwarded to the Railway Express Agency, Inc. The following described articles to be forwarded to consignee and disposition thereof is subject to the classification and tariffs in effect on the latest date to the terms and conditions of the uniform express receipt prescribed by the Interstate Commerce Commission, and in effect on the date of shipment.

PREPAID COLLECT

The description and weight indicated on this bill of lading are correct.

Subject to verification by the

WESTERN WEIGHING and INSP. BUREAU
EASTERN WEIGHING and INSP. BUREAU
SOUTHERN WEIGHING and INSP. BUREAU
TRANS-CONTINENTAL FREIGHT BUREAU

Agent

THIS MEMO ... copy or duplicate, covering this property named herein, and is intended as ... for filing or record.

RECEIVED, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the Original Bill of Lading,

3

From HOERNER WALDORF CORP ATION

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said carrier (the word carrier being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its route, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the terms and conditions of the Uniform Domestic Straight Bill of Lading set forth (1) in Uniform Freight Classification in effect on the date hereof, if this is a rail or a rail water shipment, or (2) in the applicable motor carrier classification or tariff if this is a motor carrier shipment.
Shipper hereby certifies that he is familiar with all the terms and conditions of the said bill of lading, including those on the back thereof, set forth in the classification or tariff which governs the transportation of this shipment, and the said terms and conditions are hereby agreed to by the shipper and accepted for himself and his assigns.

AT	SHIPPER'S NO.	AGENT'S NO.	DATE
P.O. BOX 3260 ST. PAUL, MINNESOTA 55114	21 - 27233		3-4 76

CONSIGNED TO (Mail or street address of consignee for purposes of notification only.)

GREIF BROS CORP
~~2503 DE 33RD ST~~
~~FORT WORTH, TEXAS~~
25354
STOP OFF AT; 645 E. ELLIOTT AVE
ST. LOUIS, MO
30251O

ROUTE	DELIVERING CARRIER	IF PREPAID WRITE PREPAID	CAR INITIAL	CAR NO.	CAR SEAL NUMBER
CPU CPU					

COMMODITY CODE DESCRIPTION

CODE	COMMODITY DESCRIPTION	CODE	COMMODITY DESCRIPTION
01	Bottle or Can Carrying Cartons or Containers, other than corrugated, flat, KDF or FF	09	Pulpboard or fibreboard NOIBN, fibre content not less than 80% woodpulp, waste paper or mixture thereof, Corrugated
02	Boxes, Fibreboard, corrugated folded flat	10	Pulpboard or fibreboard NOIBN, fibre content not less than 80% woodpulp, waste paper or mixture thereof, not corrugated or indented
03	Boxes, Fibreboard, other than corrugated, folded flat	11	Woodpulp and Ground woodpulp
04	Bags, NOI	12	Waste or Scrap Paper, not sensitized, machine pressed
05	Bags, plastic, flat, with tube or spouts	13	Machinery NOI
06	Fillers, Partitions or Wrappers NOI Fibreboard corrugated folded flat	14	Barrels, Iron or Steel, not engraved nor etched, covered or not re-used, old worn out
07	Fillers, Partitions or Wrappers NOI, Fibreboard other than corrugated folded flat	15	None
08	Store Display Racks or Stands Fibreboard K D flat or folded flat	16	None

VOUCHER NO

Subject to Section 7 of Conditions of applicable bill of lading, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement
The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of Consignor)

Received $
to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

Per
(The signature here acknowledges only the amount prepaid.)

Charges Advanced
$

NO. OF PKGS.	BOXES	CASES	SKIDS	ROLLS	BALES	COMM. CODE	KIND OF PACKAGE, DESCRIPTION OF ARTICLES, SPECIAL MARKS, AND EXCEPTIONS * OR ITEM NOT LISTED ABOVE	WEIGHT (SUBJECT TO COR.)	CLASS OR RATE	CK. COL.
6			X			3		10,600		
							DRIVER- SIGN THIS #3 COPY AND LEAVE IT ON THE COUNTER PLEASE!			

† The fibre boxes used for this shipment conform to the specifications set forth in the box maker's certificate thereon and all other requirements of the Uniform Freight Classification."

† Shipper's imprint in lieu of stamp, not a part of bill of lading approved by the Interstate Commerce Commission.

* If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is carrier's or shipper's weight.
NOTE - Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.
The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

Per

HOERNER WALDORF CORP.
General Offices
St. Paul, Minnesota 55101

WHEN TENDERED TO THE RAILWAY EXPRESS AGENCY, INC.
The following described articles to be forwarded to consignee and destination shown below, subject to the classification and tariffs in effect on date hereof and to the terms and conditions of the uniform express receipt prescribed by the Interstate Commerce Commission, and in effect on the date of shipment.

PREPAID COLLECT

The description and weight indicated on this bill of lading are correct.
Subject to verification by the
WESTERN WEIGHING and INSP. BUREAU
EASTERN WEIGHING and INSP. BUREAU
SOUTHERN WEIGHING and INSP. BUREAU
TRANS-CONTINENTAL FREIGHT BUREAU

★ ...ding to Agreement

COD

Shipper or

REXCO

A Division of REA Express, Inc.
8001 ROOSEVELT BLVD., SUITE 102
PHILADELPHIA, PA. 19152

LEASE 71161

MANIFEST No. 5262

DATE	TRACTOR	TRAILER	TERMINAL
3-9-76	200(1)	200A(1)	409 St. Paul, MN

OWNER'S NAME	DRIVER'S NAME
E.A. OLMSTED / COLTON, CALIF.	ROBERT. TAYLOR/COLTON, CALIF.

SHIPPER – ORIGIN	CONSIGNEE – DESTINATION	WEIGHT
GRIEF BROS./ST. PAUL, MN	GRIEF BROS./ FT. WORTH, TX	36,560

STOP OFFS AT:		NO. PCS.	WEIGHT
1. GRIEF BROS./	ST. LOUIS, MO	22 skids	36,560 as 40,000
2.			
3.			

SPECIAL INSTRUCTIONS:

MILES – +40v

ADVANCE – 300.00

DRAFT NO. – 87971

AMT. DUE CONTR. – 692.25

dm LESS ADVANCE – 304.00

OTHER DEDUCTIONS – 16.50

dm NET DUE CONTR. – 371.75

DATE PAID –

plcadds 4386

IN CASE OF AN ACCIDENT CALL
PROTECTIVE XXXXX INSURANCE CO.
317-925-3501

75-32801 (cabcard)
Okl stamp 49473 5
TX stamp 66562 1
MO permit 10
dm .50

SETTLEMENT CHECK TO:
E.A. OLMSTED
22789 FAIRBURN DRIVE.
COLTON, CALIF 92324

PAID
APR 28 1976
30192

ORIGINAL: REXCO OFFICE–PHILADELPHIA
YELLOW: ACCOUNTING DEPARTMENT
PINK: DRIVER'S COPY
GOLDENROD: ORIGIN TERMINAL

6

533

REXCO
8001 Roosevelt Blvd.
Philadelphia, Pa. 19152
(215) 332-0230
a division of REA Express

	Waybill No. 5262
Date 3-9-76	Shipper No.
Driver R. Taylor	Unit Nos. 200/200a

Shipper
GRIEF BROS.

ST. PAUL, MN

Consignee
2503 N E 33RD ST
FORT WORTH TX
76111

FOR DELIVERY PURPOSES ONLY – REVENUE BILLING TO FOLLOW

No. Pkgs.	Description	Weight	Rate	Charges
16	PALLETAINERS OF BTM. ELEMENTS	25980		
	THIS BILL FOR MOVEMENT AND DELIVERY ONLY AND REVENUE TO FOLLOW			
	Received in good order Signed E D White PRINT Name Below Date 3-12-76			

ORIGINAL

REXCO
8001 Roosevelt Blvd.
Philadelphia, Pa. 19152
(215) 332-0230
a division of REA Express

	Waybill No. 5262
Date 3-9-76	Shipper No.
Driver R. Taylor	Unit Nos. 200/200a

Shipper
GRIEF BORS.

ST. PAUL, MN

Consignee
ST. LOUIS, MO
6455 Ellis H

534
-7=

FOR DELIVERY PURPOSES ONLY – REVENUE BILLING TO FOLLOW

No. Pkgs.	Description	Weight	Rate	Charges
1	Pallets Boxes - Fiberboard OTT Corrugated Folded Shut	1062 #		
	THIS BILL FOR MOVEMENT AND DELIVERY ONLY AND REVENUE TO FOLLOW			
	Received in good order Signed Crest Bros Corp PRINT Name Below P. Schlote / JAW Date 3/11/76			

ORIGINAL

534

Form MCS 59 Prescribed by the U.S. Department of Transportation Federal Highway Administration Rev.-67

DRIVER'S DAILY LOG

(ONE CALENDAR DAY — 24 HOURS)

FORM APPROVED BUDGET BUREAU NO. 04-R2399

ORIGINAL — FILE EACH DAY AT HOME TERMINAL
DUPLICATE — DRIVER RETAINS IN HIS POSSESSION FOR ONE MONTH

3 (MONTH) 9 (DAY) 70 (YEAR)

*582 (TOTAL MILEAGE TODAY)

*82 (TOTAL MILES DRIVING TODAY)

I certify these entries are true and correct: Robert L. Taylor (DRIVER'S SIGNATURE IN FULL)

1 - 1 (VEHICLE NUMBERS — (SHOW EACH UNIT))

Rexo Div of CTA (NAME OF CARRIER OR CARRIERS)

ERNIE GUSTASON (NAME OF CO-DRIVER)

Philadelphia. Pa. (MAIN OFFICE ADDRESS)

INVER GROVE MINN (HOME TERMINAL ADDRESS)

	Total Hours
1: OFF DUTY	6
2: SLEEPER BERTH	8
3: DRIVING	9½
4: ON DUTY (Not Driving)	½
REMARKS	24

5267

MINNEAPOLIS MINN 554145 TRIP INSP 554233 FUEL

Shipping document, manifest number, or name of a shipper and commodity. Information required by Section 395.8(a)
Check the time and enter name of place you reported and where released from work and when and where each change of duty occurred. Explain excess hours — Section 395.8(a).

From: St Paul. MINN (STARTING POINT OR PLACE) To: St Louis MO, Ft Worth TEX (DESTINATION OR TURN AROUND POINT OR PLACE)

USE TIME STANDARD AT HOME TERMINAL

REDIFORM 6K681

Form MCS 59 Prescribed by the U.S. Department of Transportation Federal Highway Administration Rev.-67

DRIVER'S DAILY LOG

(ONE CALENDAR DAY — 24 HOURS)

FORM APPROVED BUDGET BUREAU NO. 04-R2399

ORIGINAL — FILE EACH DAY AT HOME TERMINAL
DUPLICATE — DRIVER RETAINS IN HIS POSSESSION FOR ONE MONTH

3 (MONTH) 10 (DAY) 70 (YEAR)

502 (TOTAL MILEAGE TODAY)

203 (TOTAL MILES DRIVING TODAY)

I certify these entries are true and correct: Robert L. Taylor (DRIVER'S SIGNATURE IN FULL)

1 - 1 (VEHICLE NUMBERS — (SHOW EACH UNIT))

REXCO (NAME OF CARRIER OR CARRIERS)

ERNIE GUSTASON (NAME OF CO-DRIVER)

Philadelphia PA (MAIN OFFICE ADDRESS)

INVER GROVE MINN (HOME TERMINAL ADDRESS)

	Total Hours
1: OFF DUTY	12
2: SLEEPER BERTH	7
3: DRIVING	4 3/4
4: ON DUTY (Not Driving)	¼
REMARKS	24

5262

554233 Fuel 125 gal 554513

554550 Fuel 110 gal

554680

554733 St Louis mo.

535 -8-

Shipping document, manifest number, or name of a shipper and commodity. Information required by Section 395.8(a)
Check the time and enter name of place you reported and where released from work and when and where each change of duty occurred. Explain excess hours — Section 395.8(a).

From: Minneapolis MINN (STARTING POINT OR PLACE) To: Ft Worth TEX (DESTINATION OR TURN AROUND POINT OR PLACE)

USE TIME STANDARD AT HOME TERMINAL

REDIFORM 6K681

DRIVER'S VEHICLE CONDITION REPORT

Required [redacted] raph 3 [redacted] tor Cr [redacted] ty Re [redacted]

INSTR TIONS TO DRIVER

Drivers should (✓) items which are satisfactory and (X) items which are not, and explain defects next to the X or if there is insufficient room, under "Remarks". Items which are marked (X) by the driver must show a (✓) with mechanic's initials indicating correction before continuance of operation and a short explanation of the repairs completed either next to the ✓ or if there is insufficient room, under "Remarks".

VEHICLE INSPECTION	Driver's Report	Mechanic's Report
BEFORE STARTING ENGINE		
Brake Lines to Trailer		
Electric Lines to Trailer		
Drive Line		
Coupling Devices		
Tires & Wheels		
Springs		
Body		
Glass		
EMERGENCY EQUIPMENT		
Torches/Lanterns/Reflectors		
Fusees		
Flags		
Fire Extinguisher		
Tire Chains		
AFTER STARTING ENGINE		
Fuel System		
Cooling System		
Engine		

VEHICLE INSPECTION	Driver's Report	Mechanic's Report
AFTER STARTING ENGINE		
Leaks		
Lights, Head		
Tail		
Stop and Turn		
Clearance and Marker		
Reflectors		
Air Pressure Warning Device		
Oil Pressure		
Ammeter		
Horn		
Windshield Wipers		
Parking Brakes		
Clutch		
Transmission		
Rear Vision Mirrors		
Steering		
Service Brakes		
Speedometer		

I certify that I have, on this date, inspected the above items as required on Vehicle or Van No _____ and found them to be in proper condition, unless otherwise noted.

Signed _____ / _____ / _____
Driver Date

TIME IN	STOPS	TIME OUT

Speedometer Finish

Speedometer Start

Mileage Today

LAYOVER TIME

TOWN	FROM	TO	TOTAL
			HRS
			HRS

TOWN DEL.	WEIGHT	TIME	EXPENSES

Remarks:

D[redacted]ER'S [redacted]HIC[redacted]ON[redacted]ON[redacted]POR[redacted]

Required by Paragraph 396.7 Motor Carrier Safety Regulations

INSTRUCTIONS TO DRIVER

Drivers should (✓) items which are satisfactory and (X) items which are not, and explain defects next to the X or if there is insufficient room, under "Remarks". Items which are marked (X) by the driver must show a (✓) with mechanic's initials indicating correction before continuance of operation and a short explanation of the repairs completed either next to the ✓ or if there is insufficient room, under "Remarks".

VEHICLE INSPECTION	Driver's Report	Mechanic's Report
BEFORE STARTING ENGINE		
Brake Lines to Trailer		
Electric Lines to Trailer		
Drive Line		
Coupling Devices		
Tires & Wheels		
Springs		
Body		
Glass		
EMERGENCY EQUIPMENT		
Torches/Lanterns/Reflectors		
Fuses		
Flags		
Fire Extinguisher		
Tire Chains		
AFTER STARTING ENGINE		
Fuel System		
Cooling System		
Engine		

VEHICLE INSPECTION	Driver's Report	Mechanic's Report
AFTER STARTING ENGINE		
Leaks		
Lights, Head		
Tail		
Stop and Turn		
Clearance and Marker		
Reflectors		
Air Pressure Warning Device		
Oil Pressure		
Ammeter		
Horn		
Windshield Wipers		
Parking Brakes		
Clutch		
Transmission		
Rear Vision Mirrors		
Steering		
Service Brakes		
Speedometer		

I certify that I have, on this date, inspected the above items as required on Vehicle or Van No. _____ and found them to be in proper condition, unless otherwise noted.

Signed _____ Driver / Date /

TIME IN	STOPS	TIME OUT

Speedometer Finish

Speedometer Start

Mileage Today

LAYOVER TIME

TOWN	FROM	TO	TOTAL
			HRS.
			HRS.

TOWN DEL.	WEIGHT	TIME	EXPENSES

Remarks:

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Form MCS 59 Prescribed by the U.S. Department of Transportation Federal Highway Administration Rev.-67

DRIVER'S DAILY LOG

(ONE CALENDAR DAY — 24 HOURS)

FORM APPROVED BUDGET BUREAU NO 04-R2299

ORIGINAL— FILE EACH DAY AT HOME TERMINAL

DUPLICATE— DRIVER RETAINS IN HIS POSSESSION FOR ONE MONTH

3 (MONTH) 11 (DAY) 96 (YEAR) 507 (TOTAL MILEAGE TODAY) 1 - 1 (VEHICLE NUMBERS — SHOW EACH UNIT)

146 (TOTAL MILES DRIVING TODAY)

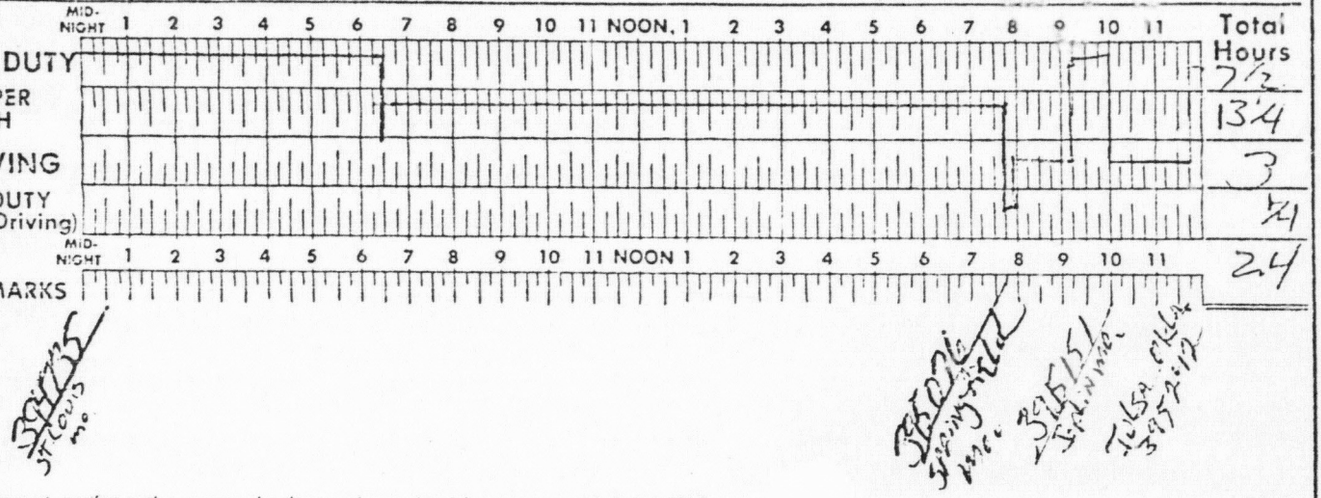
I certify these entries are true and correct: Robert Walter Snyder (DRIVER'S SIGNATURE IN FULL)

REA Express (NAME OF CARRIER OR CARRIERS)

ERNIE GUSTASON (NAME OF CO-DRIVER)

Philadelphia PENN (MAIN OFFICE ADDRESS)

INVER GROVE MINN (HOME TERMINAL ADDRESS)



Total Hours
7½
13¼
3
¼
24

Shipping document, manifest number, or name of a shipper and commodity, information required by Section 395.8(a)

Check the time and enter name of place you reported and where released from work and when and where each change of duty occurred. Explain excess hours —Section 395.8(a)

From: Minneapolis Minn. (STARTING POINT OR PLACE) To: Ft Worth Tex (DESTINATION OR TURN AROUND POINT OR PLACE)

REDIFORM 6K681 USE TIME STANDARD AT HOME TERMINAL

537 -10-

Form MCS 59 Prescribed by the U.S. Department of Transportation Federal Highway Administration Rev.-67

DRIVER'S DAILY LOG

(ONE CALENDAR DAY — 24 HOURS)

FORM APPROVED BUDGET BUREAU NO 04-R2299

ORIGINAL— FILE EACH DAY AT HOME TERMINAL

DUPLICATE— DRIVER RETAINS IN HIS POSSESSION FOR ONE MONTH

3 (MONTH) 12 (DAY) 96 (YEAR) 521 (TOTAL MILEAGE TODAY) 1 - 1 (VEHICLE NUMBERS — SHOW EACH UNIT)

240 (TOTAL MILES DRIVING TODAY)

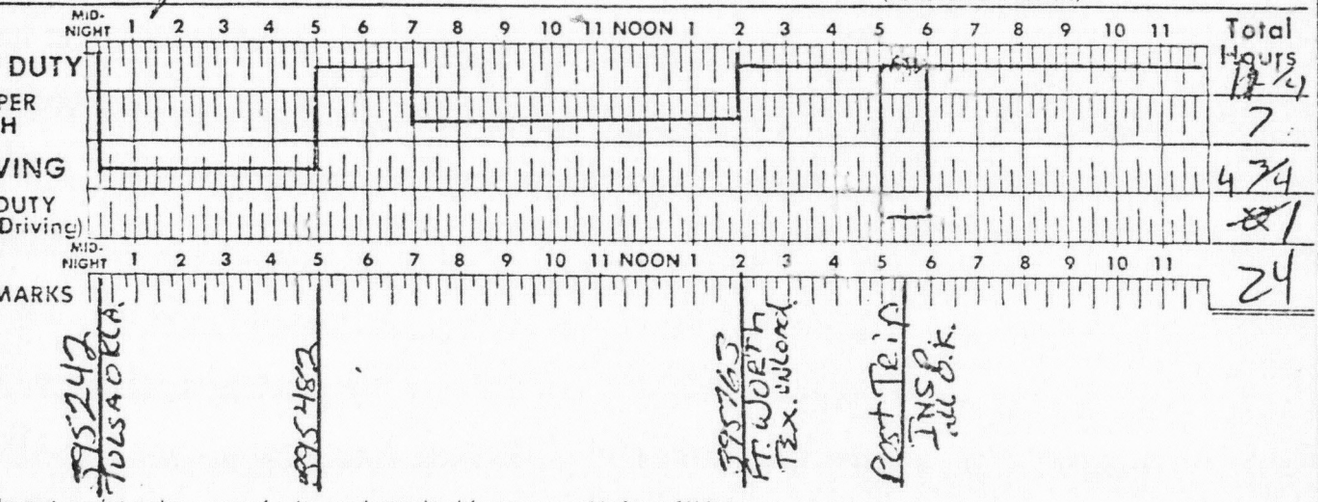
I certify these entries are true and correct: Robert Walter Snyder (DRIVER'S SIGNATURE IN FULL)

REA Express (NAME OF CARRIER OR CARRIERS)

ERNIE GUSTASON (NAME OF CO-DRIVER)

Philadelphia PENN (MAIN OFFICE ADDRESS)

INVER GROVE MINN. (HOME TERMINAL ADDRESS)



Total Hours
12¼
7
4¾
~~¼~~
24

Shipping document, manifest number, or name of a shipper and commodity, information required by Section 395.8(a)

Check the time and enter name of place you reported and where released from work and when and where each change of duty occurred. Explain excess hours —Section 395.8(a)

From: Minneapolis Minn (STARTING POINT OR PLACE) To: Ft Worth Tex (DESTINATION OR TURN AROUND POINT OR PLACE)

REDIFORM 6K681 USE TIME STANDARD AT HOME TERMINAL

DRIVER [illegible] C[illegible]TIO[illegible]EP[illegible]

Required by Paragraph 396.7 Motor Carrier Safety Regulations

INSTRUCTIONS TO DRIVER

Drivers should (✓) items which are satisfactory and (X) items which are not, and explain defects next to the X or if there is insufficient room, under "Remarks". Items which are marked (X) by the driver must show a (✓) with mechanic's initials indicating correction before continuance of operation and a short explanation of the repairs completed either next to the ✓ or if there is insufficient room, under "Remarks".

VEHICLE INSPECTION	Driver's Report	Mechanic's Report	VEHICLE INSPECTION	Driver's Report	Mechanic's Report
BEFORE STARTING ENGINE			AFTER STARTING ENGINE		
Brake Lines to Trailer			Leaks		
Electric Lines to Trailer			Lights, Head		
Drive Line			Tail		
Coupling Devices			Stop and Turn		
Tires & Wheels			Clearance and Marker		
Springs			Reflectors		
Body			Air Pressure Warning Device		
Glass			Oil Pressure		
EMERGENCY EQUIPMENT			Ammeter		
Torches/Lanterns/Reflectors			Horn		
Fusees			Windshield Wipers		
Flags			Parking Brakes		
			Clutch		
			Transmission		
Fire Extinguisher			Rear Vision Mirrors		
Tire Chains			Steering		
AFTER STARTING ENGINE			Service Brakes		
Fuel System			Speedometer		
Cooling System					
Engine					

I certify that I have, on this date, inspected the above items as required on Vehicle or Van No. _____ and found them to be in proper condition, unless otherwise noted.

Signed _____ Driver _____ / _____ / _____ Date

TIME IN	STOPS	TIME OUT
	A	
	B	
	C	
	D	

Speedometer Finish

Speedometer Start

Mileage Today

LAYOVER TIME

TOWN	FROM	TO	TOTAL
			HRS.
			HRS.

TOWN DEL.	WEIGHT	TIME	EXPENSES
A			
B			
C			

Remarks

538

[redacted] DRIVER'S [redacted] VEHICLE [redacted] INSPECTION [redacted] REPORT [redacted]

Required by Paragraph 396.7 Motor Carrier Safety Regulations

INSTRUCTIONS TO DRIVER

Drivers should (✓) items which are satisfactory and (X) items which are not, and explain defects next to the X or if there is insufficient room, under "Remarks". Items which are marked (X) by the driver must show a (✓) with mechanic's initials indicating correction before continuance of operation and a short explanation of the repairs completed either next to the ✓ or if there is insufficient room, under "Remarks".

VEHICLE INSPECTION	Driver's Report	Mechanic's Report	VEHICLE INSPECTION	Driver's Report	Mechanic's Report
BEFORE STARTING ENGINE			AFTER STARTING ENGINE		
Brake Lines to Trailer			Leaks		
Electric Lines to Trailer			Lights, Head		
Drive Line			Tail		
Coupling Devices			Stop and Turn		
Tires & Wheels			Clearance and Marker		
Springs			Reflectors		
Body			Air Pressure Warning Device		
Glass			Oil Pressure		
EMERGENCY EQUIPMENT			Ammeter		
Torches/Lanterns/Reflectors			Horn		
Fusees			Windshield Wipers		
Flags			Parking Brakes		
			Clutch		
			Transmission		
Fire Extinguisher			Rear Vision Mirrors		
Tire Chains			Steering		
AFTER STARTING ENGINE			Service Brakes		
Fuel System			Speedometer		
Cooling System					
Engine					

I certify that I have, on this date, inspected the above items as required on Vehicle or Van No. _____ and found them to be in proper condition, unless otherwise noted.

Signed _____ Driver _____ / _____ / _____ Date

TIME IN	STOPS	TIME OUT

Speedometer Finish

Speedometer Start

Mileage Today

LAYOVER TIME

TOWN	FROM	TO	TOTAL
			HRS
			HRS

TOWN DEL.	WEIGHT	TIME	EXPENSES

Remarks

Form-MCS 59 Prescribed by the U.S. Department of Transportation and Highway Administration Rev.-67

FORM APPROVED BUDGET BUREAU NO 04-R2399

DRIVER'S DAILY LOG

(ONE CALENDAR DAY — 24 HOURS)

ORIGINAL— FILE EACH DAY AT HOME TERMINAL
DUPLICATE— DRIVER RETAINS IN HIS POSSESSION FOR ONE MONTH

3 (MONTH) 12 (DAY) 76 (YEAR) 321 (TOTAL MILEAGE TODAY) 321 (TOTAL MILES DRIVING TODAY)

I certify these entries are true and correct (DRIVER'S SIGNATURE IN FULL)

1-1 (VEHICLE NUMBERS — SHOW EACH UNIT)

REA Express 140 (NAME OF CARRIER OR CARRIERS)

Louis Gustason (NAME OF CO-DRIVER)

Philadelphia Penn (MAIN OFFICE ADDRESS)

Inver Grove Minn (HOME TERMINAL ADDRESS)

	MID-NIGHT 1 2 3 4 5 6 7 8 9 10 11 NOON 1 2 3 4 5 6 7 8 9 10 11	Total Hours
1: OFF DUTY		12¼
SLEEPER BERTH		7
3: DRIVING		4¾
ON DUTY (Not Driving)		-0-
REMARKS		¾

395.24 Tulsa Okla. 395.462 395.465

Shipping document, manifest number, or name of a shipper and commodity. Information required by Section 395.8(a)
Check the time and enter name of place you reported and where released from work and when and where each change of duty occurred. Explain excess hours —Section 395.8(a)

From: Minneapolis Minn (STARTING POINT OR PLACE) To: Ft Worth Tex (DESTINATION OR TURN AROUND POINT OR PLACE)

USE TIME STANDARD AT HOME TERMINAL

REDIFORM 6K681

539.-12-

Form-MCS 59 Prescribed by the U.S. Department of Transportation Federal Highway Administration Rev.-67

FORM APPROVED BUDGET BUREAU NO 04-R2399

DRIVER'S DAILY LOG

(ONE CALENDAR DAY — 24 HOURS)

ORIGINAL— FILE EACH DAY AT HOME TERMINAL
DUPLICATE— DRIVER RETAINS IN HIS POSSESSION FOR ONE MONTH

3 (MONTH) 10 (DAY) 76 (YEAR) (TOTAL MILEAGE TODAY) (TOTAL MILES DRIVING TODAY)

I certify these entries are true and correct (DRIVER'S SIGNATURE IN FULL)

1-1 (VEHICLE NUMBERS — SHOW EACH UNIT)

REXCO (NAME OF CARRIER OR CARRIERS)

Robert Taylor (NAME OF CO-DRIVER)

Philadelphia PA (MAIN OFFICE ADDRESS)

Inver Grove Minn (HOME TERMINAL ADDRESS)

	MID-NIGHT 1 2 3 4 5 6 7 8 9 10 11 NOON 1 2 3 4 5 6 7 8 9 10 11	Total Hours
1: OFF DUTY		10½
SLEEPER BERTH		7½
3: DRIVING		
ON DUTY (Not Driving)		
REMARKS		24

395.38 Missouri Okla. 395.45 395.462

Shipping document, manifest number, or name of a shipper and commodity. Information required by Section 395.8(a)
Check the time and enter name of place you reported and where released from work and when and where each change of duty occurred. Explain excess hours —Section 395.8(a)

From: Minneapolis (STARTING POINT OR PLACE) To: Ft. Worth Tex. (DESTINATION OR TURN AROUND POINT OR PLACE)

USE TIME STANDARD AT HOME TERMINAL

REDIFORM 6K681

DRIVER'S [redacted] HIC[redacted] CO[redacted] IO[redacted] PO[redacted]

Required by Paragraph 396.7 Motor Carrier Safety Regulations

INSTI[redacted]TIONS TO DRIVER

Drivers should (✓) items which are satisfactory and (X) items which are not, and explain defects next to the X or if there is insufficient room, under "Remarks". Items which are marked (X) by the driver must show a (✓) with mechanic's initials indicating correction before continuance of operation and a short explanation of the repairs completed either next to the ✓ or if there is insufficient room, under "Remarks".

VEHICLE INSPECTION	Driver's Report	Mechanic's Report
BEFORE STARTING ENGINE		
Brake Lines to Trailer		
Electric Lines to Trailer		
Drive Line		
Coupling Devices		
Tires & Wheels		
Springs		
Body		
Glass		
EMERGENCY EQUIPMENT		
Torches/Lanterns/Reflectors		
Fuses		
Flags		
Fire Extinguisher		
Tire Chains		
AFTER STARTING ENGINE		
Fuel System		
Cooling System		
Engine		

VEHICLE INSPECTION	Driver's Report	Mechanic's Report
AFTER STARTING ENGINE		
Leaks		
Lights, Head		
Tail		
Stop and Turn		
Clearance and Marker		
Reflectors		
Air Pressure Warning Device		
Oil Pressure		
Ammeter		
Horn		
Windshield Wipers		
Parking Brakes		
Clutch		
Transmission		
Rear Vision Mirrors		
Steering		
Service Brakes		
Speedometer		

I certify that I have, on this date, inspected the above items as required on Vehicle or Van No. _____ and found them to be in proper condition, unless otherwise noted.

Signed _____ / _____ / _____
Driver Date

TIME IN	STOPS	TIME OUT

Speedometer Finish

Speedometer Start

Mileage Today

LAYOVER TIME

TOWN	FROM	TO	TOTAL
			HRS.
			HRS.

TOWN DEL.	WEIGHT	TIME	EXPENSES

Remarks:

DRIVER'S VEHICLE CONDITION REPORT

[redacted] required by [redacted] Motor Carrier Safety Regulations

INSTRUCTIONS TO DRIVER

Drivers should (✓) items which are satisfactory and (X) items which are not, and explain defects next to the X or if there is insufficient room, under "Remarks". Items which are marked (X) by the driver must show a (✓) with mechanic's initials indicating correction before continuance of operation and a short explanation of the repairs completed either next to the ✓ or if there is insufficient room, under "Remarks".

VEHICLE INSPECTION	Driver's Report	Mechanic's Report
BEFORE STARTING ENGINE		
Brake Lines to Trailer		
Electric Lines to Trailer		
Drive Line		
Coupling Devices		
Tires & Wheels		
Springs		
Body		
Glass		
EMERGENCY EQUIPMENT		
Torches/Lanterns/Reflectors		
Fusees		
Flags		
Fire Extinguisher		
Tire Chains		
AFTER STARTING ENGINE		
Fuel System		
Cooling System		
Engine		

VEHICLE INSPECTION	Driver's Report	Mechanic's Report
AFTER STARTING ENGINE		
Leaks		
Lights, Head		
Tail		
Stop and Turn		
Clearance and Marker		
Reflectors		
Air Pressure Warning Device		
Oil Pressure		
Ammeter		
Horn		
Windshield Wipers		
Parking Brakes		
Clutch		
Transmission		
Rear Vision Mirrors		
Steering		
Service Brakes		
Speedometer		

I certify that I have, on this date, inspected the above items as required on Vehicle or Van No. _____ and found them to be in proper condition, unless otherwise noted.

Signed _____ / / Driver Date

TIME IN	STOPS	TIME OUT

Speedometer Finish

Speedometer Start

Mileage Today

LAYOVER TIME

TOWN	FROM	TO	TOTAL
			HRS.
			HRS.

TOWN DEL.	WEIGHT	TIME	EXPENSES

Remarks:

540 -13-

Form MCS 59 Prescribed by the U.S. Department of Transportation Federal Highway Administration Rev.-67

FORM APPROVED. BUDGET BUREAU NO. 04-R2399

ORIGINAL— FILE EACH DAY AT HOME TERMINAL
DUPLICATE— DRIVER RETAINS IN HIS POSSESSION FOR ONE MONTH

DRIVER'S DAILY LOG

(ONE CALENDAR DAY — 24 HOURS)

3 (MONTH) 11 (DAY) 76 (YEAR) — (TOTAL MILEAGE TODAY) — (TOTAL MILES DRIVING TODAY)

I certify these entries are true and correct (DRIVER'S SIGNATURE IN FULL)

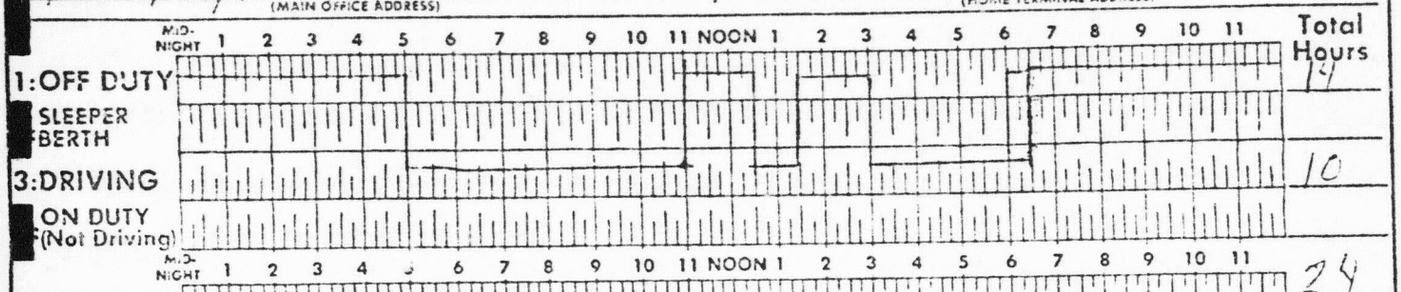
1-1 (VEHICLE NUMBERS — SHOW EACH UNIT)

Rexco (NAME OF CARRIER OR CARRIERS)

Philapelphia Pa (MAIN OFFICE ADDRESS)

Robert Taylor (NAME OF CO-DRIVER)

Inver Grove Minn (HOME TERMINAL ADDRESS)



Shipping document, manifest number, or name of shipper and commodity. Information required by Section 395.8(a)
Check the time and enter name of place you reported and where released from work and when and where each change of duty occurred. Explain excess hours —Section 395.8(a)

From: Minneapolis (STARTING POINT OR PLACE) To: Ft Worth Tex (DESTINATION OR TURN AROUND POINT OR PLACE)

USE TIME STANDARD AT HOME TERMINAL

REDIFORM 6K681

541 -14-

Form MCS 59 Prescribed by the U.S. Department of Transportation Federal Highway Administration Rev.-67

FORM APPROVED. BUDGET BUREAU NO. 04-R2399

ORIGINAL— FILE EACH DAY AT HOME TERMINAL
DUPLICATE— DRIVER RETAINS IN HIS POSSESSION FOR ONE MONTH

DRIVER'S DAILY LOG

(ONE CALENDAR DAY — 24 HOURS)

3 (MONTH) 12 (DAY) 76 (YEAR) — (TOTAL MILEAGE TODAY) — (TOTAL MILES DRIVING TODAY)

I certify these entries are true and correct (DRIVER'S SIGNATURE IN FULL)

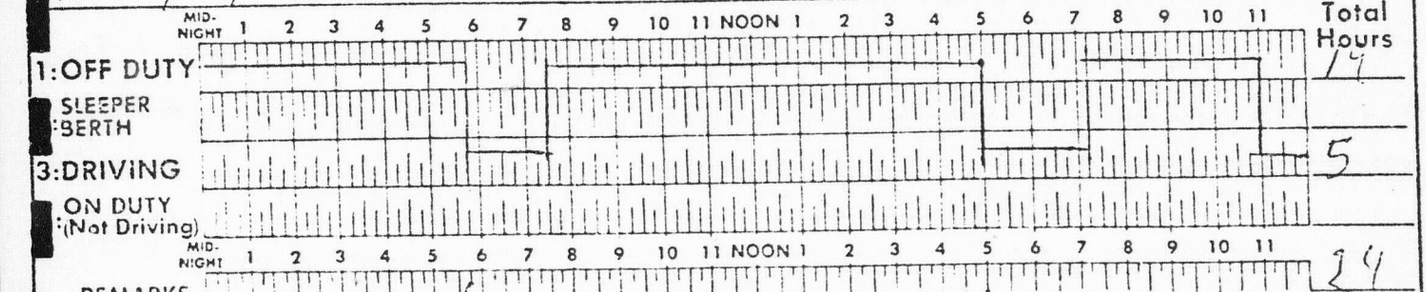
1-1 (VEHICLE NUMBERS — SHOW EACH UNIT)

Rexco (NAME OF CARRIER OR CARRIERS)

Philapelphia Pa (MAIN OFFICE ADDRESS)

Robert Taylor (NAME OF CO-DRIVER)

Inver Grove Minn (HOME TERMINAL ADDRESS)



Shipping document, manifest number, or name of shipper and commodity. Information required by Section 395.8(a)
Check the time and enter name of place you reported and where released from work and when and where each change of duty occurred. Explain excess hours —Section 395.8(a)

From: Minneapolis (STARTING POINT OR PLACE) To: Ft Worth Tex (DESTINATION OR TURN AROUND POINT OR PLACE)

USE TIME STANDARD AT HOME TERMINAL

REDIFORM 6K681

DRIVER'S [redacted]ICLE CONDITION REPORT [redacted]

Required by [redacted]graph 392.7 Motor Carrier Safety Regu[redacted]

INSTRU[redacted]ONS TO DRIVER

Drivers should (✓) items which are satisfactory and (X) items which are not, and explain defects next to the X or if there is insufficient room, under "Remarks". Items which are marked (X) by the driver must show a (✓) with mechanic's initials indicating correction before continuance of operation and a short explanation of the repairs completed either next to the ✓ or if there is insufficient room, under "Remarks".

VEHICLE INSPECTION	Driver's Report	Mechanic's Report	VEHICLE INSPECTION	Driver's Report	Mechanic's Report
BEFORE STARTING ENGINE			AFTER STARTING ENGINE		
Brake Lines to Trailer			Leaks		
Electric Lines to Trailer			Lights, Head		
Drive Line			Tail		
Coupling Devices			Stop and Turn		
Tires & Wheels			Clearance and Marker		
Springs			Reflectors		
Body			Air Pressure Warning Device		
Glass			Oil Pressure		
EMERGENCY EQUIPMENT			Ammeter		
Torches/Lanterns/Reflectors			Horn		
Fusees			Windshield Wipers		
Flags			Parking Brakes		
			Clutch		
			Transmission		
Fire Extinguisher			Rear Vision Mirrors		
Tire Chains			Steering		
AFTER STARTING ENGINE			Service Brakes		
Fuel System			Speedometer		
Cooling System					
Engine					

I certify that I have, on this date, inspected the above items as required on Vehicle or Van No. _____ and found them to be in proper condition, unless otherwise noted.

Signed _____ / _____ / _____
Driver Date

TIME IN	STOPS	TIME OUT

Speedometer Finish

Speedometer Start

Mileage Today

LAYOVER TIME

TOWN	FROM	TO	TOTAL
			HRS.
			HRS.

TOWN DEL.	WEIGHT	TIME	EXPENSES

Remarks:

[redacted]

542

DRI[redacted]'S V[redacted]CLE [redacted]ND [redacted]N R[redacted]RT [redacted]

Required by Paragraph 396.7 Motor Carrier Safety Regulations

INSTRUCTIONS TO DRIVER

Drivers should (✓) items which are satisfactory and (X) items which are not, and explain defects next to the X or if there is insufficient room, under "Remarks". Items which are marked (X) by the driver must show a (✓) with mechanic's initials indicating correction before continuance of operation and a short explanation of the repairs completed either next to the ✓ or if there is insufficient room, under "Remarks".

VEHICLE INSPECTION	Driver's Report	Mechanic's Report
BEFORE STARTING ENGINE		
Brake Lines to Trailer		
Electric Lines to Trailer		
Drive Line		
Coupling Devices		
Tires & Wheels		
Springs		
Body		
Glass		
EMERGENCY EQUIPMENT		
Torches/Lanterns/Reflectors		
Fuses		
Flags		
Fire Extinguisher		
Tire Chains		
AFTER STARTING ENGINE		
Fuel System		
Cooling System		
Engine		

VEHICLE INSPECTION	Driver's Report	Mechanic's Report
AFTER STARTING ENGINE		
Leaks		
Lights, Head		
Tail		
Stop and Turn		
Clearance and Marker		
Reflectors		
Air Pressure Warning Device		
Oil Pressure		
Ammeter		
Horn		
Windshield Wipers		
Parking Brakes		
Clutch		
Transmission		
Rear Vision Mirrors		
Steering		
Service Brakes		
Speedometer		

I certify that I have, on this date, inspected the above items as required on Vehicle or Van No. _____ and found them to be in proper condition, unless otherwise noted.

Signed _____ Driver / _____ Date

TIME IN	STOPS	TIME OUT

Speedometer Finish

Speedometer Start

Mileage Today

LAYOVER TIME

TOWN	FROM	TO	TOTAL
			HRS.
			HRS.

TOWN DEL.	WEIGHT	TIME	EXPENSES

Remarks:

15 –

Driver's Certification of Hours of Service

REA Express

- Occasional Drivers
- Intermittent Drivers
- Casual Drivers
- New Hire Drivers

Driver's Name	Service Center
Robert Taylor	

I certify the following is an accurate schedule of the hours I have been on duty *with any carrier* for each of the past 7 consecutive days prior to reporting for work at REA.

543
-16-

Day	Today	1 Yesterday	2	3	4	5	6	7	Total
Date	3/9	3/8	3/7	3/6	3/5	3/4	3/3	3/2	
Hours On Duty	8	~~8~~	~~8~~	~~8~~	~~8~~	~~8~~	~~8~~	~~8~~	8

I was last relieved from duty at ___ ___ AM / PM on (date) _____

Driver's signature	REA Supervisor's signature	Title	Date
X Robert Taylor			3-9-76

NOTE: ▷ OTR Line Haul Supervisor: File in respective driver's log envelope (Form No. 1132) | ▷ City P&D Supervisor: Place in Hours of Service Recap files at Service Center.

623 (9-74) ABG 73864

REA L

№ 4386

REXCO

ICC MC

544 -17-

MAR 12 RECD

Sorry, but the other Logs blew off the door of the truck.

Ed Taylor

Public Service Commission of Missouri

72-Hour License

This form must be completed by typewriter or printed legibly in ink.

Issued to PEA Express, Inc. (Not Transferable) Cert. or Permit No. T-12231

Vehicle Description ____ (Make) 23710 (Motor or Serial No.) 1B9070 CA (State License No.)

Date and hour movement commenced 6:00 AM 3-10-76

Signed [signature] (Carrier Representative) AGENT (Title)

This license is valid for 72 hours commencing with the time the vehicle described hereon is put into movement in the State of Missouri (or any state with which Missouri has a reciprocal agreement on regulatory fees) and must be properly validated by insertion of required information in spaces provided. Immediately upon validation, the white copy must be mailed by the carrier to the Public Service Commission. The pink copy should be carried in the vehicle for inspection by any law enforcement officer. At the end of the 72-hour license period, the pink copy must be mailed to the Public Service Commission. The yellow copy should be retained as a record the carrier for a period of not less than one year after use.

Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65101

14761

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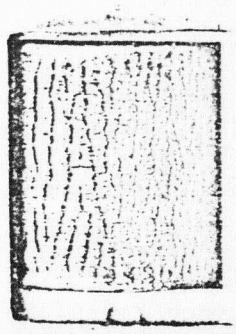

REWARDS 4306

CONTRACT-LEASE AGREEMENT or INTERCHANGE

No. A 71161

Driver ROBERT W. TAYLOR 22739 FAIRBURN DRIVE COLTON, CALIFORNIA DATE: MARCH 9, 1976

Truck No. 200(1) Make IHC Year 1970 Serial Number 2543LY022710 License Number 1B09070 CALIF.

Trailer No. 200A(1) Make THEURER Year 1966 Serial Number HL1460 License Number TEMP. REG. MAINE

Authorized Owner E.A. OLMSTED Address 22739 FAIRBURN DRIVE, COLTON, CALIF. 92324

REPORT OF VEHICLE INSPECTION

Indicate the result of the inspection of each item listed:

Item - Description of Defect	Item - Description of Defect	Item - Description of Defect
Brakes	Glass	Steering
Cooling System	Horn	Tires
Drive Line	Leaks	Wheels
Emergency Equipment SEE ATTACHED	Light (which?) SEE ATTACHED	Windshield Wiper SEE ATTACHED
Engine	Reflectors	Any other item requiring attention:
Exhaust	Speedometer	
Fuel System	Springs	

I hereby certify that on the 9th day of MARCH, 19 76, I carefully inspected the equipment described above and that this is a true and correct report of the result of each inspection.

(Vehicle Inspector Sign) ☞ [signature]

I hereby certify that on the date stated above the person who made the inspection covered by this report was competent and qualified to make such inspection and was duly authorized to make such inspection as a representative of:

REXCO DIVISION
Name of Authorized Carrier

Date 3-9-76 41x6 BG

Signature of Authorized Carrier or Co-Partner or Officer of Authorized Carrier

THIS AGREEMENT by and between REXCO DIV. MC66562, hereinafter called First Party, and E.A.OLMSTED hereinafter called Second Party

WITNESSETH

WHEREAS, First Party is a Motor Carrier engaged in the transportation of property for Hire in Interstate Commerce pursuant to authority granted by the Interstate Commerce Commission; and

WHEREAS, Second Party is the Owner and Operator of the Motor Vehicle Equipment, herein after more fully described, and desires to lease and hire said motor vehicle equipment to First Party for the purpose of transporting freight thereon over the certified routes of said First Party in accordance with the Terms and Conditions of this Agreement. Now, therefore, in consideration of the mutual covenants and agreements herein contained, the parties do hereby agree as follows.

1. Second Party does hereby lease to First Party the following described Motor Vehicle equipment as described above. The said equipment shall, during the term of this lease, be deemed to be under the possession, control and use of the Lessee (except that Lessee reserves the right to sub-lease said equipment). Lessor shall not use said equipment for his own use or benefit during the terms of this

2. Said described motor vehicle equipment will be operated by Second Party, his agent or employees, over the certified routes of First Party, as specified and designated by First Party. FROM ST.PAUL, MINNESOTA

VIA ROUTE ST.LOUIS, MISSOURI TO FORT WORTH, TEXAS

3. It is further understood that this lease shall terminate when said equipment arrives at destination indicated above and unloaded.

4. First Party hereby agrees to pay Second Party compensation for the use of said motor vehicle and the transportation service performed. Compensation shall be 75% OF REVENUE

5. Second Party agrees that he will at all times during the existence of this agreement keep said motor vehicle in good condition and repair and that he will pay for any and all costs and fees of any kind or nature whatsoever which are necessary for or arise from the operation of said motor vehicle equipment between the above named points.

6. Second Party further agrees that he will at all times during the existence of this agreement comply with all laws, rules and regulations of the Interstate Commerce Commission or any State Authority or Administrative Agency having jurisdiction over the operation of motor vehicles, and that he will comply with all applicable laws and regulations with respect to Workman's Compensation Insurance, assume all responsibility for payment of all State and Federal Taxes, if any, for unemployment insurance, old age pensions, or other social security or withholding tax laws as to all persons engaged in the performance of this contract, it being understood and agreed that the relation between First Party and Second Party shall not be that of Employer-Employee but that Second Party shall have at all times the status of an independent contractor.

7. Second Party agrees that he will reimburse First Party through deduction or payment for any and all shortages, loss, damage or injury to cargo while in the possession of Second Party, his agents or employees; or fines resulting from the Violations by Second Party, his agents or employees, of any applicable Federal, State or Municipal Law or Regulation.

8. Second Party further agrees that this lease shall terminate at destination stated above and that Second Party will cause to be removed all signs, identification or other evidence of name and certificate numbers belonging to First Party, and that any signs, plates, cards, delivery receipts, log sheets and other papers will be returned to First Party immediately.

THIS DRIVER IS QUALIFIED UNDER PART 391 OF MOTOR CARRIER SAFETY REGULATIONS.

HOURS on duty for the SEVEN (7) consecutive days previous to today.

MONTH MARCH DAY 9 YEAR 1976

(PRESENT DATE) DAY	HOURS ON DUTY
SEE ATTACHED	

Before starting above trip (TOTAL on Duty Hrs.) 0.00

In witness whereof, the parties have executed this agreement at

ST.PAUL City MINNESOTA State

Day of 19

X E.A. OLMSTED Lessor

By [signature]

SOC. SEC. [illegible] 565-52-9304

X REXCO DIVISION Lessee

By [signature]

RECEIPT BY OWNER (LESSOR)

The undersigned Owner hereby acknowledges the receipt of equipment from Carrier in acceptable condition on the 9th day of March, 19 76

at TWO (TWO) O'clock (a.m.) (p.m.), this terminating the above set forth lease.

, Owner

Driver (Agent) Sign ☞ [signature]

RECEIPT BY CARRIER (LESSEE)

The undersigned Carrier hereby acknowledges the receipt of the equipment above described from Owner this 9th day of March, 19 76, at 9:09 o'clock A M.

REXCO DIVISION, Lessee-Carrier

Lessee, (Agent) Sign ☞ [signature]

MAR 29 1976

DRIVER COMPLETE & SIGN THIS COPY

RETURN TO ORIGIN TERMINAL

546

-19-

CASHIER'S TEMPORARY RECEIPT

STATE OF CALIFORNIA
DEPARTMENT OF MOTOR VEHICLES

V 230873-T

LAST LICENSE No. 52467Y

USE TAX $

MAKE Ford

REFUND ORDER No.

$ 2

REGISTERED OWNER'S NAME Ea Olmsted or Kelly

ADDRESS

CITY Placer 281

PLATE 1B 09070

STICKER Yu 19178

SALE No. 5'76-1 DATE CASHIER'S No.

Alterations or erasures will void this form. Read instructions on reverse side.

ADM 340 (REV. 1-69)

DMV 3-31-76

DEC 15-76

TEMPORARY IDENTIFICATION

USED VEHICLE

Resident County of San Bernardino

Sold 1 / 21 / 76 MO DAY YR

Vehicle Identification No. A1 11410

Make of Vehicle THEURER

Year

Body Type

Last Registered State of MAINE

Sold to: (1) [illegible]

(2) [illegible]

Business or Residence Address

City

Dealer's No.

NOTE: Upon transfer or sale, dealer must enter odometer reading immediately below

THOUSANDS	HUNDREDS	/10ths
		/

NOTE: This temporary identification must be affixed to the vehicle before delivery to the purchaser.

REV. 4-74

BEST COPY AVAILABLE

547 -20

CALIFORNIA-DRIVER LICENSE

MUST BE CARRIED WHEN OPERATING A MOTOR VEHICLE AND WHEN APPLYING FOR RENEWAL

EXPIRES
BIRTHDATE

A398812
Robert Walter Taylor
22789 Fairburn Drive
Colton Ca 92324
M Brn Blu 5-8 176 78
DATE OF BIRTH
11-26-52

Robert L Taylor
2-12-75 SNE

MEDICAL EXAMINER'S CERTIFICATE

I certify that I have examined

Robert Taylor
(DRIVER'S NAME (PRINT))

IN ACCORDANCE WITH THE MOTOR CARRIER SAFETY REGULATIONS (49 CFR 391.31 391.49) AND WITH KNOWLEDGE OF HIS DUTIES, I FIND HIM QUALIFIED UNDER THE REGULATIONS

QUALIFIED ONLY WHEN WEARING CORRECTIVE LENSES.

QUALIFIED ONLY WHEN WEARING A HEARING AID.

A COMPLETED EXAMINATION FORM FOR THIS PERSON IS ON FILE IN MY OFFICE AT Loma Linda University Loma Linda
(ADDRESS)

March 13, 1975
(DATE OF EXAMINATION)

R. V. Shrader, M.D
(NAME OF EXAMINING DOCTOR (PRINT))

(SIGNATURE OF DRIVER)

22789 Fairburn Colton
(ADDRESS OF DRIVER)

(SIGNATURE OF EXAMINING DOCTOR)

CTA Form 5a58a Rev. 5/72

CERTIFICATION OF ROAD TEST

DRIVER'S NAME
SOCIAL SECURITY NO
OPERATOR'S OR CHAUFFEUR'S LICENSE NO.
STATE
TYPE OF POWER UNIT
TYPE OF TRAILER(S)
IF PASSENGER CARRIER, TYPE OF BUS

THIS IS TO CERTIFY THAT THE ABOVE NAMED DRIVER WAS GIVEN A ROAD TEST UNDER MY SUPERVISION ON 4-16 19 75
CONSISTING OF APPROXIMATELY 12 MILES OF DRIVING

IT IS MY CONSIDERED OPINION THAT THIS DRIVER POSSESSES SUFFICIENT DRIVING SKILL TO OPERATE SAFELY THE TYPE OF COMMERCIAL MOTOR VEHICLE LISTED ABOVE

(SIGNATURE OF EXAMINER)

4-16-51
(TYPE)

UNITED TRUCK
(ORGANIZATION AND ADDRESS OF EXAMINER)

CTA Form 5a58b Rev. 5/72

CERTIFICATION OF WRITTEN EXAMINATION

THIS IS TO CERTIFY THAT THE PERSON WHOSE SIGNATURE APPEARS BELOW HAS COMPLETED THE WRITTEN EXAMINATION UNDER MY SUPERVISION IN ACCORDANCE WITH THE PROVISIONS OF SECTION 391.35 OF THE MOTOR CARRIER SAFETY REGULATIONS

(SIGNATURE OF PERSON TAKING EXAMINATION)

4-16-75
(DATE OF EXAMINATION)

(LOCATION OF EXAMINATION)

(SIGNATURE OF EXAMINER)

4-16-51
(TITLE)

(ORGANIZATION AND ADDRESS OF EXAMINER)

CTA Form 5a58c Rev. 5/72

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REA Express

· Pow. Units ·

Driver's Vehicle Condition Report
Post-Trip Inspection of Equipment

Date	Time	Equipment number
5-1-76	10 (AM) ~~PM~~	1

Origin (if OTR)	Destination (if OTR)	Driver's Signature
Minneapolis Minn.	Ft. Worth Tex	Robert Taylor

Speedo or Hubo mileage reading:

Start – 394145 Finish – 395554

Service Mileage due	Note PM Sticker on left door	410000

Condition of Equipment – Explain in full each deficiency or indicate *No Defects* in writing in box → Good

Use reverse side if necessary

Driver's signature	Robert L. Taylor		
Trip Completed	Date 5-12-76	Time 5	AM (PM)
Defects Corrected	At —		
	By —	Date / /	Time AM PM

3209 (7 74) ABG 73854

6459

382-28

R' Express

Trailing Units
(Trailer, Dolly/Bogies)

Driver's Vehicle Condition Report
Post-Trip Inspection of Equipment

Date	Time	Equipment number
3-9-76	16 (AM/PM)	1

Origin (if OTR)	Destination (if OTR)	Driver's Domicile
Minneapolis Minn.	Ft Worth Tex.	[illegible]

Service due date	Note PM sticker on trailer nose or dolly tongue

Condition of Equipment – Explain in full each deficiency or indicate *No Defects* in writing in box → Good

Use reverse side if necessary

Driver's signature Robert L. Taylor

Trip Completed	Date 3-12-76		Time 5	AM (PM)
Defects Corrected	At			
	By	Date	Time	AM PM

3216 (Rev. 7-74) ABG 73855

Driver's DOT Pre-Trip Safety Inspection Report
• Power Units

REA Express

Equipment number	Date	Driver's name
1--		Robert Taylor
(If OTR) Origin	Destination	Driver's domicile

Check appropriate box for each inspection:

Inspection	OK	Defective	Remarks
Check D.O.T. Safety Certification Sticker to see that safety certification will not expire before completing this trip.	☑	☐	
Rims, Tires and Lugs	☑	☐	
All Lights and Reflectors	☑	☐	
Coupling/Fifth Wheel/Ring Pin	☑	☐	
Service Brakes, Hoses & Electrical Connections	☑	☐	
Parking Brakes	☑	☐	
Steering Mechanism	☑	☐	
Instruments and Gauges	☑	☐	
Windshield Wipers	☑	☐	
Horn	☑	☐	
Rear View Mirrors	☑	☐	
Emergency Flags/Reflectors/Triangles	☑	☐	
Fire Extinguisher 10 BC rated	☑	☐	

If inspection shows any of the above items to be missing or defective, it *must be replaced or repaired prior to departure.*

I HAVE PHYSICALLY INSPECTED THIS VEHICLE AND DETERMINED THAT ALL NOTED PARTS AND ACCESSORIES ARE IN GOOD WORKING ORDER.

Driver's signature	Date	Time
Robert Taylor	3-9-76	6-45 AM

Important:

- Driver must turn this report in to Dispatcher before departure.
- Non-manned dispatch points: Driver is to retain this Report and turn in in at his Home Dispatch Point.

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3140 (7-74) ABG 73852

Driver's DOT Pre-Trip Safety Inspection Report
• Trailing Units (Trailer—Dolly/Bogies)

REA Express

Equipment number	Date	Driver's name
1-		Robert Taylor
(If OTR) Origin	**Destination**	**Driver's domicile**

Check appropriate box for each inspection:

Inspection	OK	Defective	Remarks
Check D.O.T. Safety Certification Sticker to see that safety certification will not expire before completing this trip.	☑	☐	
Rims, Tires, Lugs	☑	☐	
Clearance Lights	☑	☐	
Side Marker Lights	☑	☐	
Stop Lights	☑	☐	
Tail Lights	☑	☐	
Turn Signals	☑	☐	
Brakes	☑	☐	
Air Hoses	☑	☐	
ɔrings	☑	☐	
Fifth Wheel/King Pin/Pintle Hook	☑	☐	

If inspection shows any of the above items to be missing or defective, it *must be replaced or repaired prior to departure.*

I HAVE PHYSICALLY INSPECTED THIS VEHICLE AND DETERMINED THAT ALL NOTED PARTS AND ACCESSORIES ARE IN GOOD WORKING ORDER.

Driver's signature	Date	Time
Robert Taylor	3-9-76.	6:45 AM

Important:

- Driver must turn this Report in to Dispatcher before departure.
- Non-manned dispatch points: Driver is to retain this Report and turn it in at his Home Dispatch Point.

3141 (7-74) ARG 73853

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DOT · Preventive Maintenance · Safety Inspection Report · Power Units

REA Express

[ ] OTR (4 days) CITY (30 days or 5,000 miles)		Speedo or Hubo reading:	Equipment number 1

			Comments; describe defect or mark OK.
1. Lights	Clearance	OK	
	Brake	OK	
	Turn	OK	
	Headlights	OK	
	Tail	OK	
2. Reflectors		OK	
3. Wiring		OK	
4. Brakes	Hoses cracked/chafing	OK	
	Leaks	None	
	Adjustment	OK	
	Air tanks secure	OK	
	Brake fluid leaks (if applicable)	OK	
	Emergency or parking brake	OK	
5. Fuel System	Leaks	None	
	Tanks secure	OK	
Steering	Steering Box secure	OK	
	Steering for looseness	OK	
7. Springs	Broken leaves	None	
	Alignment	OK	
	Hangers	OK	
8. Fire Extinguisher 10 BC Rated		OK	
9. Emergency Reflectors/Flags/Triangles		OK	
10. Fifth Wheel:		OK	
11. Rims Tires	Air Pressure	OK	
	Loose Lugs	None	

If inspection shows any of the above items to be missing or not operating properly: ▷ *Vehicle must be placed out of service!*

OTR Equipment: When all above items are certified as being in good working order, present this form to the dispatcher. • The dispatcher will release the equipment and forward this form to the OTR domicile location.

City Equipment: • File this form with the Vehicle History Jacket at the Maintenance Center or Service Center

I have physically inspected this vehicle and determined that all noted parts and accessories are in good working order.

Signature Cherie Henry Date March 9, 1976 Time 8:30 Am

Next inspection due date _____

3242 (7-74) ABG 73847

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DOT • Preventive Maintenance • Safety Inspection Report • Trailing Units (Trailer, Dolly/Bogies)

REA Express

☐ OTR (7 days) ☐ CITY (30 days or 5,000 miles)	Hubo reading (if equipped):	Equipment number 1

		Comments; describe defect or mark OK.
1. Lights	Tail OK	
	Stop OK	
	Torn OK	
	Clearance OK	
	Marker OK	
	Wiring OK	
2. Reflectors OK		
3. Brakes	Hoses cracked/chafing OK	
	Leaks None	
	Adjustment OK	
	Air tanks secure OK	
4. Springs	Broken Leaves None	
	Alignment OK	
	Hangers OK	
5. Fifth Wheel/King Pins/Pintle Hooks OK		
6. Rims, Tires	Air pressure OK	
	Loose lugs None	

If inspection shows any of the above items to be missing or not operating properly: ▷ *Vehicle must be placed out of service!*

OTR TRAILING Equipment: • When all above items are certified as being in good working order, present this form form to the Dispatcher. • The Dispatcher will release the equipment and forward this form to the System Manager, Fleet Maintenance, Chicago, Ill.

CITY TRAILING Equipment: • File this form with the Trailer/Bogie History Jacket at the Maintenance Center or Service Center.

I have physically inspected this vehicle and determined that all noted parts and accessories are in good working order.

Chris Henry — March 9, 1976 — 8:45 AM

Signature — Date — Time

Next inspection due date _____

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REXCO
a division of REA Express

8001 ROOSEVELT BLVD.
SUITE 102
PHILADELPHIA, PA. 19152
(215) 332-0230

ORIGIN STATION DOCUMENT CHECK LIST (TRIP LEASES)

Documents listed below must be obtained at Origin Station without fail, and forwarded to REXCO, Philadelphia daily, on all trip lease movements. Please staple these documents securely together, one batch for each trip and they should be stacked numerically with No. 1 on top and No. 7 on the bottom.

It is of great importance that these instructions be carried out to the letter in the interest of paying our operators on time, and I remind you that we cannot pay without proper documentation on every load. PLEASE COMPLY! Use this as a check sheet and staple copy to top of documents when forwarding same to this office.

1. MANIFEST (WHITE & YELLOW COPIES) ✓ ✓
2. TRIP LEASE (WHITE COPY)
3. SHIPPING ORDER → to be mailed in special envelope by driver
4. WAYBILL (BLUE COPY) ✓
5. PHOTOSTATS OF:
   - A. DRIVER LICENSES ✓
   - B. MEDICAL EXAMINERS CERTIFICATE ✓
   - C. CERTIFICATION OF ROAD TEST ✓
   - D. CERTIFICATION OF WRITTEN TEST ✓
   - E. TRACTOR REGISTRATION ✓
   - F. TRAILER REGISTRATION ✓
6. PRE TRIP INSPECTION POWER UNIT (TRACTOR) ✓
7. PRE TRIP INSPECTION TRAILING UNIT (TRAILER) ✓ ✓
8. SAFETY INSPECTION TRACTOR ✓
9. SAFETY INSPECTION TRAILER

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TRIP LEASE COVER SHEET

~~1. MANIFEST (WHITE & YELLOW COPIES)~~

2. TRIP LEASE (~~WHITE~~ & YELLOW COPIES)

3. SHIPPING ORDER

4. WAYBILL (WHITE, PINK) & ~~PINK~~ COPIES)

5. PHOTOSTATS OF:

   A. DRIVERS LICENSES
   B. MEDICAL EXAMINERS CERTIFICATE
   C. CERTIFICATION OF ROAD TEST
   D. CERTIFICATION OF WRITTEN TEST
   E. TRACTOR REGISTRATION
   F. TRAILER REGISTRATION

6. PRE TRIP INSPECTION POWER UNIT (TRACTOR)

7. PRE TRIP ~~INSPECTION~~ TRAILING UNIT (TRAILER)

8. POST TRIP INSPECTION POWER UNIT (~~TRACTOR~~)

9. POST TRIP INSPECTION TRAILING UNIT (~~TRAILER~~)

10. SAFETY INSPECTION REPORT POWER UNIT (TRACTOR)

11. SAFETY INSPECTION REPORT TRAILING UNIT (TRAILER)

12. LOGS

13. RECAP OF HOURS (PAST 7 DAYS OF DRIVERS DUTY TIME)

14. FUEL RECIEPTS

15. CUT OUT OF PLACARDS WITH THE PLACARD NUMBER

28

555 - ~~29~~

Ex24

BEFORE THE

INTERSTATE COMMERCE COMMISSION

No. MC-C-8862
BRADA MILLER FREIGHT SYSTEM, INC. v. REXCO, INC. and
REA EXPRESS, INC.

No. MC-C-8864
SCHNEIDER TRANSPORT, INC. v. REA EXPRESS, INC.

No. MC-C-8867
AMERICAN TRUCKING ASSOCIATIONS, INC. v. REA EXPRESS, INC.

No. MC-C-8874
ASSOCIATED TRUCK LINES, INC. ET AL. v. REA EXPRESS, INC.

No. MC-66562 (Sub-No. 2345) (Part No. 181)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS,
INC. FOR CANCELLATION OF TEMORARY AUTHORITIES

No. MC-66562 (Sub-No. 2308 TA)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS,
INC. FOR CANCELLATION OF TEMPORARY AUTHORITIES

REQUEST FOR ADMISSION AND/OR STIPULATION OF FACTS

C. Orvis Sowerwine, Trustee in Bankruptcy for the defendant, REA Express, Inc., submits the following assertions of fact and requests that they be admitted as true and/or stipulated by the complainants:

(1) A highway express carrier of general commodities is not prohibited from handling any particular type of traffic.

(2) A highway express carrier of general commodities is not required to publish any particular level of rates but may publish any level of rates for express service which

is reasonably compensatory and otherwise lawful.

(3) REA, as of 1960, handled shipments of various sizes ranging from about 20 lbs. up to carloads of certain perishable commodities.

(4) As of 1960 REA's principal traffic consisted of small shipments averaging about 50 lbs.

(5) As of 1960 approximately 93% of the total number of shipments, representing 64% of the total tonnage and 75% of REA's total revenue, consisted of shipments weighing 100 lbs. or less.

(6) As of 1960 almost 50 percent of REA's traffic moved at its first and second class rates or multiples of first class which generally were higer than the comparable motor carrier class rates; about 35 percent moving on commodity rates, covering such ariticles as printed matter, wearing apparel, shoes, drugs, auto parts, freight moving on Government Bills of Lading, and cut flowers, all of which were rated at or above the motor carrier general average of Class 70 for less-than-truckload traffic; and only about 9 percent consisted of miscellaneous commodities, some of which were rated below the indicated general motor carrier average classification.

(7) As of 1960, on an overall basis, REA's traffic would be rated above the motor carrier average rating of Class 100.

(8) As of approximately 1960 REA had derived revenues on the average for shipments up to 50 lbs, for 50 lbs. to 100 lbs. and average revenues on all shipments which were less than the minimum charges which would be assessed per shipment if the traffic were to move by motor carriers.

(9) In 1960, almost 60 million shipments were handled by REA, with an average weight of 46.5 lbs. This was a reduction from 87 million shipments in 1950 when the average weight was about 61.5 lbs.

(10) During the 20 year period, from 1938 to 1958, REA's traffic declined from 1,480 to 1,197 million ton-miles.

(11) The 1958 volume amounted to only 80.9 percent of that handled in 1939, although by 1958 motor common carriers had increased their traffic volume over 1939 by 367.6 percent and the railroads by 65.4 percent.

(12) In relation to all intercity freight traffic, REA's share declined from 0.27% of the total in 1934 to only 0.1% in 1958; by contrast, the share of motor common carriers increased from 9.79% of the total in 1939 to 20.57% in 1959.

(13) In 1959, a new standard agreement was concluded with the railroads.

(14) In 1959 new management assumed control of REA: new operating and pricing policies were inaugurated.

(15) Begining in 1959 REA revamped its express operations and, with respect to less-than-truckload and less-than-

carload merchandise, became a vigorous competitor of motor carriers and freight forwarders.

(16) REA continued to provide a so-called premium service at premium rates where the traffic involved requires special handling in the interest of expedition or special protection. However, this so-called premium service is available primarily only in connection with shipments by air or with respect to perishables and valuables.

(17) REA's contemporary transportation role during the period 1960-1975, was, essentially, in the performance under single-carrier responsibility, of a nationwide service on virtually every kind of freight which, regardless of the size, shape, density, weight or value, is moved with approximately the same degree of expedition.

(18) As of 1960, in general, REA's underlying line-haul was performed by the railroads, predominantly in passenger trains, with only about 5 percent of its total intercity service being provided over the highway.

(19) As of the period 1960-1964, REA was clearly authorized by the Commission to transport a part of the container traffic, the rates for which were in issue in Docket No. 33977, Freight, All Kinds, LCL Container Charges - USA, in all motor service if the traffic moved in "express service" within the meaning of REA's certificate.

Mr. Sullivan: May I proceed?

Mr. Naffpliotis: Your Honor, the Bureau has some redirect.

Now, if there is some reason why Mr. Sullivan wants to proceed before that, if he wants to leave town, then we will forego our redirect at this time and allow him to proceed ahead of us.

Mr. Sullivan: I would so request, Your Honor.

Thank you, very much.

Q (By Mr. Sullivan) Mr. Bussolati, I would direct your attention specifically to Exhibit 19, which was identified after I had previously cross examined you.

I would request that you look at the original of that exhibit, Exhibit 19, which was identified for the record.

A Yes, sir.

Q Please go to what has been identified as Page 4 of Exhibit 19-A. Find thatdocument in the original manifest packet marked for identification as Exhibit 19.

A I have it.

Q Now, on my copy there is a block down in the lower left hand corner, right to the right of Hoerner-Waldorf Corporation, that I cannot read on my xerox copy.

Can you read that into the record? It says something about "Railway Express Agency."

A "When tendered to the Railway Express Agency, Inc., the following described articles to be forwarded to consignee, and destination, shown below, subject to the publications and tariffs and in attention to date..." -- something I can't read -- "...to the terms and conditions at the uniform express receipt published by the Interstate Commerce Commission, and in effect on the date of shipment."

Q I show you what has been marked, identified and received into evidence as Exhibit 1, appendix 12.

I would reference you to item 10, "Subject: Governing Publications," and ask you to read into the record the governing publication in effect in the REXCO tariff FCC 153, paragraph A, item 10.

Mr. Cleary: Objection, Your Honor.

I think we are getting redundant on the record. I think we can call the witness's attention to it and go on to other questions.

Mr. Sullivan: It is very important I qualify this man as having knowledge. It goes to the particular restriction in the certificate.

Mr. Cleary: I object. He cannot be qualified just by having read it here in the record.

Mr. Sullivan: May we have a ruling, Your Honor? It is very short.

Judge Eadlow: For clarification at this point, I will

allow it to be read.

The witness: "Item 10. Subject: Governing Publications. Paragraph A.

"The Official Express Classification 36, ICC 6200, Railway Express Agency, Inc., Series. Notes A and C apply."

Mr. Sullivan: That is sufficient.

Q (By Mr. Sullivan) Mr. Bussolari, in further foundation for the question I am going to ask you, I ask you to confirm that I have correctly read a tariff citation.

"Railway express Agency, Inc., Official Express Classification 36," dated January 16, 1956, effective March 1, 1956, and in the upper right hand corner we have ICC 6200. Is that correct?

A Yes.

Q We go to the table of contents, and have I characterized correctly, sir: "Motor Carrier Application, Interstate, Page 2."

A Yes, sir.

Q "Rules: Officials of express companies authorized to prepare and issue tariffs, page 2." then we have "Uniform Special Contracts 69 and 70."

A Yes, sir.

Q Under that "Uniform Express Receipt 63," do we not?

A Yes, sir.

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Q Down on page 2, this tariff makes this particular rules tariff applicable to motor carrier application on interstate traffic, does it not?

A Yes, sir.

Q Go to rule 2 --

Mr. Cleary: Is Mr. Bussolati being qualified by Mr. Sullivan as his witness as an expert in the REA Express, Inc., tariffs?

Mr. Sullivan: No, sir.

Mr. Cleary: I suggest they do speak for themselves. We can get to the question, Mr. Sullivan, which you want to ask, if the witness is qualified to answer it, if it relates to REXCO or REA tariffs.

Mr. Sullivan: It is only going to take three minutes to qualify him, Judge. If I ask the question now, he will object because there is no foundation.

Judge Beddow: I will allow the foundation to be laid.

Mr. Cleary: I object to the line as way beyond the direct, way beyond my cross examination to the direct, and entirely new material in new areas.

Mr. Sullivan: I am going to link it up. It will become patently clear.

Judge Beddow: I will allow this.

Q (By Mr. Sullivan) "Rule 2, receiving shipments.

"Paragraph A. A receipt, the form prescribed herein,

must be given for all matter received.'

Did I read that correctly?

A Yes.

Q Yes, I also ask you page 11. Do we have in the tariff a copy -- I'm sorry. I apologize. Not on a receipt of a uniform express receipt?

A Page 63, yes, we do, sir.

Q At the bottom, paragraph 6, does it state, "When consigned to a place at which the express company has no office, shipments must be marked with the name of the express station at which delivery will be accepted, or be marked with forwarding directions if to go beyond the express company's line by carrier other than express company. If not so marked, shipments will be refused?

A Yes.

Q Based upon that term, I would ask you, based on your investigation, where does REA Express maintain any express offices right today?

A The best of my knowledge, there are none, sir.

Q Here is another condition of the uniform express receipts.

"Nine: Free delivery will not be made at points where the company maintains no delivery service."

Did I read that correctly?

A YEs, sir.

Q Go with me through 64, 65, 66, 67, 68, and 69. In each and every instance, does that give an example of a uniform express receipt?

A Yes.

Q Do you see any through bills of lading in there? Would you feel more comfortable reading the titles into the record?

A I see the titles. They don't say uniform bill of lading.

They are all classified as Express Receipt.

Q Am I now showing you the cover sheet for Supplement 71, effective April 14 -- dated April 14, 1970, and effective May 19, 1970?

A Yes, sir.

Q Do you see any uniform through bills of lading in there?

A No, sir.

Q Am I showing you supplemen 53? Do you see any uniform through bills in there?

A No.

Q I show you supplement 50. Do we have a uniform receipt and contract for livestock?

A Yes.

Q Do you see any uniform through bills of lading in that supplement?

A No, sir.

Q I show you supplement 43 --

Mr. Cleary: Your Honor, can we get counsel's question, rather than having him ask the witness to look at the tariff.

Mr. Sullivan: I have to qualify him.

This is the last question on it.

Mr. Cleary: I object to him qualifying the witness on tariffs of RMA Express, when I have been denied the right to ask questions, and he has disqualified himself, and Counsel Hafpliotis has been objecting to questions in the area of this man knowing anything about RMA Express, Inc., when he is limited to talking about REXCO Division in this case.

Judge Seddow: I will hear the additional question?

Q (By Mr. Sullivan) On page 22 and 23 we have a uniform throughengaged bill of lading?

A That is correct.

Q Have you familiarized yourself generally with how tariffs must be applied pursuant to operating authority under the Interstate Commerce Act?

A Generall, yes, sir.

Q Do you remember Sub 1515 -- and let's look at it again. Didn't it have a restriction in there about limiting the use of this authority to instances where traffic moves

on a through bill of lading, or express receipt?

A Yes, sir.

Q I would ask you the question that we have set up:

If I remember correctly, your answer to my question was that you did not see a single express receipt at Philadelphia when you looked through some 6,000 documents. Am I completely correct on that?

A The additional express receipt, yes, sir.

Q Based upon your experience as a transportation specialist in the examination of authorities, I would ask you don't we have here, based upon your examination of some approximately 6,000 instances, unauthorized transportation, as well as a possible violation of the Elkins Act?

A Well --

Mr. Cleary: Objection, Your Honor. Mr. Nafpliotis has totally disqualified the witness from responding to that, if counsel is trying to get anything in concept close to a legal conclusion as to authorized or unauthorized transportation. At most the witness has been talking about particular routes. That is all he has talked about. Counsel Sullivan is trying to qualify him in tariffs. He has not been qualified. He has gotten into express company tariffs, not just the NYKCO tariffs, and it is totally beyond the qualifications of the witness.

Mr. Nafpliotis: I concur with Mr. Cleary's objection

I would like to be able to continue this afternoon, but I don't know if I am physically capable. I am going to ask others to try to pursue it for me. I would hope I could complete my intended summaries tomorrow, which is Thursday, the day of the week that I asked we have an adjournment to, and I think perhaps the ruling on Monday that we would have to continue immediately was perhaps reflective of some concern as to the overall length of the proceeding. I had no intention whatsoever in this proceeding to try to fill the record, as I have indicated before, with the type of things I was confronted with.

Mr. Sullivan: May I pose an alternative procedure?

Our same objections to these are going too long. We are not going to agree.

I would recommend, or I would pray you assign this an exhibit number, accept it into evidence per your rulings at some later date, say, five days, and subject to our exceptions, and then, Mr. Cleary could rest except for that.

Judge Beddow: I was thinking of something like that myself. As a late filed exhibit.

Mr. Cleary: That would be fine.

Mr. Peterman: I would also like to point out we are still awaiting the answers to the interrogatories that we served May 19.

Mr. Cleary: Since Mr. Peterman is throwing questions, I

will ask, does he have that resolution that permits ATA to appear in this proceeding --

Mr. Peterman: Absolutely not, and you are not going to get it either, sir.

Judge Beddow: Well, I believe if the interrogatory has not been satisfied by now --

Mr. Sullivan: It is a little late.

Mr. Peterman: Certainly is.

Judge Beddow -- it is obviously not going to be.

Mr. Sullivan: Mr. Cleary, are you going to rest, subject to being able to submit the other --

Mr. Cleary: No, I am not ready to rest. I have been reminded by co-counsel that we have got a few -- we have one other exhibit.

Mr. Sullivan: Judge, while he is is digging that out, before we go off the record again, I would press for an expedited briefing schedule. I would hope that I would not have to be here tomorrow morning to look at documents. I think maybe this would be a propitious time to take that up.

Judge Beddow: We will check this additional matter first.

Mr. Cleary: AT the moment, I do have an additional document. It is a two-page document entitled "Request for Admission and/or Stipulation of Fact".

I will give the original to the reporter. I had

Exhibit 32

BEFORE THE

INTERSTATE COMMERCE COMMISSION

No. MC-C-8862
BRADA MILLER FREIGHT SYSTEM, INC. v. REXCO, INC. and
REA EXPRESS, INC.

No. MC-C-8864
SCHNEIDER TRANSPORT, INC. v. REA EXPRESS, INC.

No. MC-C-8867
AMERICAN TRUCKING ASSOCIATIONS, INC. v. REA EXPRESS, INC.

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SUPPLEMENTAL ADMISSIONS AND/OR STIPULATION OF FACTS

C. Orvis Sowerwine, Trustee in Bankruptcy for the defendant, REA Express, Inc., submits the following assertions of fact and requests that they be admitted as true and/or stipulated by the complainants/petitioner as supplemental to and in addition to those assertions in Exhibit 24 encompassing paragraphs numbers one (1) through nineteen (19): [Paragraphs (20) through (29), as did paragraphs

(1) through (19) in Exhibit 24, have as their source for the truth of the facts stated the findings of fact in the Report and Order of the Commission On Oral Argument in Docket No. 33977, Freight, All Kinds, L.C.L. Container Charges - U.S.A., 323 I.C.C. 468 *Decided October 19, 1964).]

(20) Authority granted to REA under Part II of the Act to transport "general commodities, moving in express service" may be regarded at least for the purpose of determining the lawfulness of rates on freight, all kinds less-than-carload, in containers, holding up to 3000 lbs. between 35 main points with the intercity transportation being performed either by utilizing rail carriers or REA's own highway vehicles, as coextensive with its authority as an express company under Section 1(3)(a) of the Act. (323 I.C.C. at 477)

(21) Express service cannot be differentiated from general freight service on the basis of particular traffic, a particular weight of shipment, or particular rates. (323 I.C.C. at 479)

(22) Such attributes of express service as the transportation of small shipments at premium rates are descriptive rather than limiting in nature: if a true express service is held out to the public, most of the shipments attracted will weigh less than 500 pounds and the cost of moving them expeditiously will be greater than if they were held for aggregation into truckload lots. (323 I.C.C. at 479)

(23) Historically, REA has handled shipments weighing in excess of 500 lbs., including carload shipments. (323 I.C.C. at 481-2; 304 I.C.C. 699 at 705, 725-727)

(24) The intercity highway movements of REA and those of motor freight carriers are performed with the same general type of equipment. (323 I.C.C. at 483)

(25) REA and its competitors are governed by the same speed limits. (323 I.C.C. at 483)

(26) Transportation conditions have changed over the years so as to permit ordinary freight carriers to improve their operations to the point where they are now in a position to provide service substantially equivalent to that of express. (323 I.C.C. at 483)

(27) Changed conditions do not and should not prevent REA from applying new and advanced techniques and methods of handling its traffic or of pricing its service, in order to achieve economies and efficiencies which may directly or indirectly inure to the benefit of the public. (323 I.C.C. at 483)

(28) With changed conditions and the advent of REA's new management in 1959, competition between express service and ordinary freight service has been waged more vigorously and on a wider front. (323 I.C.C. at 484)

(29) In 1961 motor freight carriers transported approximately 85 percent of the total less-than-carload and less-than-truckload tonnage moved in the United States: REA's share

was only about 2 percent of the total. (323 I.C.C. at 484)

[Paragraphs (30) through (46) have as their source for the truth of the facts stated the findings of fact in the Report of the Commission in Ex Parte 210, Increased Express Rates and Charges, 1957, 304 I.C.C. 699 (Decided October 13, 1958).]

(30) From 1939 to 1946, inclusive, the total rail and airline traffic handled by the Agency (REA's predecessor) increased from 148,855,809 to 234,661,737 shipments, in gross revenue from all sources increased from $169,982,000 to $433,626,000: the traffic and revenue reached an alltime peak in 1946. (304 I.C.C. at 701)

(31) Appendix A hereto reveals for the entire system the trend during 1946 to 1956, inclusive in the volume of shipments, gross revenue, expenses, the cost per shipment, the express-privilege to the railroads and airlines, and the ratio of such payments to revenue. (304 I.C.C. at 701)

(32) Less-than-carload traffic declined in 1951 to about one-third of that in 1946, and the revenue from such traffic decreased to a low for the entire ten-year period. (304 I.C.C. at 702)

(33) Appendix B shows the result in 1953 and 1956. (304 I.C.C. at 702, 756)

(34) Between August of 1953 and October of 1958, the Railway Express Agency, Incorporated made attempts to increase

the volume of business and revenue through more intense solicitation by sales personnel, and increase in such personnel, the employment of field supervisors in areas where warranted, and expansion of its advertising programs. (304 I.C.C. at 703)

(35) Between August of 1953 and October of 1958, pickup and delivery limits were reduced at cities where the volume of traffic declined, but in certain areas such limits were expanded to keep pace with industrial expansion and the movement of particular industries from congested cities to suburban areas. (304 I.C.C. at 703-704)

(36) At the time of Ex Parte 210, the Agency estimated that for the prospective year beginning October 1, 1957, it would handle 11,649 carload shipments and 74,653,000 less-than-carload shipments, which at current rate would have produced $12,447,000 and $350,314,000 in gross revenue, respectively, a total of $362,761,000, exclusive of that received from miscellaneous charges, compared with a total of $353,370,366 in 1956. (304 I.C.C. at 705)

(37) The total number of carloads of shipments of each type of all fruits except berries in each of the years 1953-1956 moved by express and rail freight is shown below:

Commodity	1953		1954		1955		1956	
	Express	Freight	Express	Freight	Express	Freight	Express	Freight
Apricots	27	454	37	294	33	445	23	289
Berries [1]	1,784		2,085		1,818		2,514	
Cherries	797	11	585	36	819	86	760	117
Figs [2]	56	89	71	137	51	159	67	224
Grapes	2,810	22,034	1,905	23,611	2,205	25,848	1,614	21,359
Nectarines	42	259	49	499	42	701	25	463
Peaches	21	3,439	21	3,400	122	4,587	39	2,726
Pears	6	3,263	4	4,469	1	3,032	4	3,959
Plums	230	3,465	278	2,710	245	3,367	161	4,321
Mixed fruit	190	680	166	42	151	62	103	143

[1] Principally strawberries.
[2] Includes figs, persimmons, and pomegranates.

(304 I.C.C. at 730)

(38) The absence in 1957-1958 of express service on carload shipments of fruit from California for the entire distance to eastern markets was emphasized: cars, when loaded, normally moved in freight service from origins to concentration points, including Roseville, California, from which the movement was in so-called trainload express specials during the heavy movement period, and in passenger-train service when the volume was light; the haul in freight service from eight California origins to Roseville ranged from 65 to 298 miles, and averaged about 203 miles, almost 10 percent of the average distance from those origins to Chicago; express charges, however, were paid for the entire haul; expedited freight service was available, subject to a minimum of 15 carloads per train, at lower rates than by express, with practically no difference in transit time to Chicago, Detroit, Cleveland, Pittsburgh, and Boston and only one day less to Philadelphia and New York City. No improvement had been made for years in the transit time by express, whereas freight schedules had been reduced by two days between 1953 and 1957-1958. (304 I.C.C. at 731)

(39) The following table shows the number of carloads of cherries from shippers in Oregon and Washington represented by the Northwest Horticultural Council, which carloads

moved by express, rail, and truck, and percentage of the total movement by each mode of transportation for the years 1952-1957:

Year	Express	Percent of total	Rail freight	Percent of total	Refrigerated truck [1]	Percent of total	Total movement
1952	699	65.5	328	32	25	2.5	1,022
1953	938	74	288	22.6	44	3.4	1,270
1954	787	67.5	312	30	27	2.5	1,136
1955	841	60	504	36	58	4	1,403
1956	171	53	100	34	23	8	294
1957	324	38.5	455	54.2	61	7.3	840

[1] A truckload frequently exceeds the average carload moving by express.

(304 I.C.C. at 733)

(40) At the time of Ex Parte 210, carload traffic shipments by express consisted of fresh fruits, vegetables, fish, dressed lamb, race horses, livestock, magazines, other periodicals, and government traffic moving at section 22 rates. (304 I.C.C. at 736)

(41) Appendix C shows amounts of revenues and costs of Agency for 1956, and also for a projected 12-month period October 1957 to September 1958 at then current and proposed express rate levels, and the November 1, 1957, cost level, for three possible traffic levels. (304 I.C.C. at 747, 757)

(42) Successful operations in rail express service are dependent upon public favor, and shippers will not continue to use that service unless it is worth the price asked therefore. (304 I.C.C. at 750)

(43) When rail express service was initially established, its chief appeal was specialized service and superior speed in transit not available from other types of carriage, but as of Ex Parte 210 those advanatages had been practically lost by the inauguration of new modes of transportation, improvements therein over the years, and the establishment of rates by certain of those competitors lower than by rail express: air freight rates, for example, although initially higher than those of the Agency, at the time of Ex Parte 210 were lower in many instances; freight-forwarder service was also then available at rates approximately 50 of the express charges from and to practically all major cities; trucks then frequently offered faster transit time from and to certain points than was available by rail express, and even the railroads by improvement in expedited freight service then competed with rail express service. (704 I.C.C. at 750)

(44) At the time of Ex Parte 210, new criteria of what rail express service was worth to the shipping public had been introduced which could not be ignored in judging the value-of-service element or the revenue effect of the proposed Ex Parte 210 increase. (304 I.C.C. at 750)

(45) The curtailment of passenger-train service during recent years prior to Ex Parte 210 and its deteriorating effect upon express service also had a material effect

upon the value of such service. (304 I.C.C. at 750)

(46) The proposed Ex Parte 210 increases on carload traffic were not justified. (304 I.C.C. at 753)

(47) Paragraphs (47) through (59) have as their source for the truth of the facts stated the findings of fact in the Report and Order on reconsideration in Docket No. 33975, and embraced proceedings, Chemicals In Aggregate Shipments - Midland, Mich., To The East, 335 I.C.C. 20 (decided April 16, 1969)).

(48) Prior to January 15, 1962, the effective date of rates proposed and published by Railway Express Agency, Inc., (REA) to establish reduced commodity rates and minimum charges on straight or mixed shipments of chemicals, minimum 20,000 and 30,000 pounds, from Midland, Mich. to Delaware, Maryland, New Jersey, New York, Pennsylvania, Virginia, the six New England states, and the District of Columbia and prior to the effectiveness on January 4, 1963 of REA proposed reduced commodity rates and minimum charges on prepaid shiments of the same chemicals, minimum 20,000 and 30,000 pounds, tendered by one shipper at one address at one time in Midland, Mich., and consigned to any number of consignees at all points in 25 States in the South and West, Dow Chemical Company tendered REA only those chemical shipments weighing over 20 pounds for which REA's charges were less than the motor carrier minimum charges,

and those under 20 pounds which did not qualify for parcel post. (335 I.C.C. at 22)

(49) Thus, in May, 1961, of the 2,144,000 pounds of traffic which Dow shipped to the considered Eastern States, REA handled 3,159 pounds in contrast to 1,900,000 pounds transported by motor common carriers, 4,806 pounds by parcel post, and 333 pounds by bus express. (335 I.C.C. at 22)

(50) After the proposed rates became effective on January 15, 1962, REA's share of this traffic to the Eastern States increased to 480,334 pounds in May of 1962, in contrast to the 3,159 pounds which were transported during the corresponding months of 1961, to the same States. (335 I.C.C. at 25)

(51) Dow and REA had the following agreement for picking up these consolidated chemical shipments in issue in Docket No. 33975 and consolidated proceedings:

> The respondent spots a trailer for loading at Dow's less-than-truckload dock at 4 p.m. every Monday, Wednesday, and Friday, and Dow and REA personnel complete loading by 8:30 p.m. (A straight truck which serves the plant on a daily basis is used for any overflow.) An REA tractor pulls the trailer about 31 miles via Bay City to REA's Saginaw, Mich., terminal, whence The New York Central Transport Company (a motor carrier subsidiary of the New York Central Railroad Company now the Penn Central Company),[4] moves it over the road 95 miles to Detroit, arriving about 12:30 a.m. the next day. At Detroit the rear-loaded traffic (except explosives), destined to New England and upstate New York is loaded into rail cars for transportation to ultimate destination. The explosives, including those destined to New York City, are moved by truck to Toledo, Ohio, thence by rail to destination. The Midland trailer, with its remaining traffic and any additional Pittsburgh, Pa., traffic waiting at Detroit is then dispatched to Pittsburgh, beyond which point the REA moves the traffic in either rail or motor service.

[4] It should be noted that Midland, Bay City, and Saginaw are all points on the New York Central Railroad. REA closed its Bay City office on February 17, 1959, and thereafter pickup and delivery service at Saginaw was extended to include Bay City, as stated in the applicable REA tariffs. Bay City is 11 highway miles from Saginaw.

(52) Between 1949 and 1958, REA's total intercity freight, in millions of ton-miles, declined from 1,848 to 1,197. (335 I.C.C. at 29)

(53) There is no merit in the argument that "the proposed service (for Dow) (was) not equally expeditious as that which the REA provides for other traffic because the proposed service usually involves delayed tender by the shipper", since the amount of any delay shown on the record was not undue. (335 I.C.C. at 31)

(54) The occurance of any delay under the service proposed for Dow was at the instance of the shipper, not the carrier.

(55) The operation in handling Dow's chemicals in aggregate shipments was on firmly established schedules as clearly shown by the facts that REA regularly spots a trailer at Dow's dock at 4:00 p.m., every Monday, Wednesday, and Friday, in spite of the possibility that Dow might, during a busy season, occasionally phone REA and request that an additional trailer be spotted on other days or at other hours. (335 I.C.C. at 32)

(56) Saginaw, Mich. is 11 miles beyond Bay City, the eastern most point authorized for service by the involved certificate held by REA for motor carrier operation. (335 I.C.C. at 32)

(57) REA tariffs on file with the Commission indicated that Bay City is a point within the Saginaw terminal area; accordingly, the movement of the Dow traffic by truck from Bay City to Saginaw is a pickup and delivery service within the Saginaw terminal area and as such is governed by the provisions of Part I rather than Part II of the Act. (335 I.C.C. at 32)

(58) In connection with express company operations of REA, the term "ickup and delivery service" is used broadly and should be understood to include not only service to or from the place of business or residence of a consignor or consignee of express shipment, but also the transfer of express traffic between stations. (335 I.C.C. at 32)

(59) The movement from Bay City to Saginaw is the transfer of express shipments between stations and as such is subject to Part I of the Act. (335 I.C.C. at 32)

APPENDIX A

Number of shipments, revenues, revenue per shipment, expenses, taxes, costs of handling, express-privilege payments, and ratios of payments to revenue for years 1946 to 1956, inclusive.

(All figures reflect thousands except average cost per shipment and percentage ratios.)

Items	1946	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956
Number of shipments:											
Carload	17	17	16	15	14	13	14	14	13	13	12
Less-than-carload	231,464	189,320	141,748	106,113	87,102	77,685	92,020	85,780	75,760	78,238	80,710
Air	3,181	3,759	4,043	3,600	4,231	4,298	4,228	4,425	4,594	5,223	5,599
Total	234,662	193,096	145,807	109,728	91,437	81,996	96,262	90,225	80,367	83,474	86,321
Revenues:											
Carload	$10,729	$10,038	$12,437	$11,502	$12,629	$10,884	$12,982	$12,745	$11,852	$12,673	$11,453
Less-than-carload	391,995	399,693	382,423	302,087	276,028	275,608	348,576	343,317	321,437	328,455	341,918
Air	14,718	17,553	18,504	17,272	22,901	30,657	32,304	34,239	33,248	40,316	42,105
Subtotal	$417,442	$428,084	$413,414	$330,861	$311,558	$317,167	$393,902	$390,301	$366,537	$381,444	$395,476
All other revenue and credits	16,184	15,314	13,335	11,023	9,729	8,533	8,774	7,776	7,563	8,221	9,846
Total	$433,626	$443,398	$426,749	$341,884	$321,287	$325,700	$402,706	$398,077	$374,100	$389,665	$405,322
Average revenue:											
Carload	$631.41	$653.10	$760.31	$768.03	$872.12	$844.12	$898.27	$873.33	$884.07	$1,002.60	$977.05
Less-than-carload	1.69	2.11	2.70	2.85	3.17	3.55	3.79	4.00	4.24	4.20	4.24
Air	4.63	4.67	4.58	4.80	5.41	7.14	7.66	7.74	7.24	7.72	7.52
Average—all shipments	1.76	2.22	2.84	3.02	3.41	3.87	4.09	4.33	4.56	4.57	4.58
Expenses and taxes:											
Operating expenses	$305,483	$288,608	$277,208	$235,250	$207,683	$209,551	$232,007	$227,439	$222,717	$225,843	$241,781
Express taxes	19,841	24,216	17,883	15,853	14,171	13,673	15,091	14,710	13,057	15,034	17,545
Other debits	1,488	1,463	1,707	1,587	2,639	1,723	1,590	1,476	1,466	1,414	1,694
Total	$326,812	$314,377	$296,301	$252,690	$224,493	$224,947	$249,588	$243,655	$238,140	$242,291	$261,020
Cost of handling:											
Total—all shipments	$312,745	$300,992	$285,263	$243,394	$215,182	$217,627	$242,403	$237,521	$230,915	$237,242	$233,854
Average per shipment	$1.33	$1.56	$1.96	$2.22	$2.35	$2.65	$2.52	$2.63	$2.87	$2.84	$2.94
Express-privilege payments:											
Carload	$9,120	$9,297	$10,613	$9,776	$10,735	$9,251	$11,034	$10,834	$10,044	$11,406	$10,307
Less-than-carload	88,243	100,134	108,876	70,137	73,107	75,838	125,238	126,062	108,628	115,108	113,659
Air	9,451	10,589	10,438	9,281	13,042	15,663	16,845	17,526	16,697	20,860	20,330
Total	$106,314	$120,020	$129,947	$89,194	$96,884	$100,752	$153,117	$154,422	$135,959	$147,374	$144,302
Ratio express privileges to revenue:	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*
Carload	85	85	85	85	85	85	85	85	89.81	90	90
Less-than-carload	22.51	27.31	28.47	23.22	26.49	27.52	35.93	36.72	33.70	35.05	33.24
Air	64.21	60.33	56.52	53.73	56.95	51.06	52.05	51.19	50.19	51.74	48.3

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APPENDIX B

Comparison of gross revenue, operation expenses, express-privilege payments, and express-privilege ratios, 1953 and 1956

(All figures expressed in thousands except percentage ratios.)

Details	Eastern		Southern		Western		Mountain Pacific	
	1953	1956	1953	1956	1953	1956	1953	1956
Revenue, income and credits:								
Air	$17,443	$19,965	$4,072	$5,095	$7,453	$9,657	$5,271	$6,788
Carload	4,023	3,328	878	837	4,651	4,176	3,187	3,111
Less-than-carload	180,780	179,391	49,492	50,118	80,569	81,572	32,475	30,836
Subtotal	202,251	202,684	54,442	56,050	92,673	95,405	40,933	40,735
Other revenue and credits	3,701	5,202	1,297	1,404	1,613	1,908	1,166	1,273
Total	205,952	207,886	55,739	58,114	94,286	97,313	42,099	46,008
Expenses, taxes, other debits:								
Operating expenses	129,472	138,976	31,789	34,028	46,270	47,701	19,014	21,074
Express taxes	8,345	10,064	2,191	2,532	2,970	3,353	1,234	1,505
Other debits	684	816	224	248	318	369	219	252
Total	138,501	149,856	33,198	36,808	49,588	51,423	21,367	22,831
Express-privilege payments:								
Air	8,038	9,641	2,082	2,750	3,811	4,665	2,695	3,270
Carload	3,424	2,995	746	753	3,053	3,759	2,709	2,799
Less-than-carload	55,988	45,394	18,713	17,802	36,933	37,465	15,328	12,998
Total	67,450	58,030	21,541	21,305	44,697	45,889	20,732	19,076
Express privilege ratios:	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*
Air	51.24	49.20	51.13	48.28	51.14	48.31	51.13	48.3
Carload	85.	90.	85.	90.	85.	90.	85.	90.
Less-than-carload	30.47	25.3	37.91	35.52	45.84	45.93	47.2	48.3

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APPENDIX C

Railway Express Agency

Revenues, expenses, taxes, and express-privilege payments to class I railroads based on handling of 80,710,438 less-than-carload express shipments, year 1956 and projected year at levels of 74,653,000, 70,920,350, and 67,187,700 shipments under present and proposed rates and November 1, 1957, cost level

[Dollars in millions]

Line	Item	Year 1956	Estimated results 12-month period October 1957–September 1958 [1]			
			Under current rates	Under 15 percent rate increase		
				No loss of traffic	5-percent loss, less-than-carload traffic	10-percent loss, less-than-carload traffic
	(1)	(2)	(3)	(4)	(5)	(6)
	Railway Express Agency:					
	Gross operating revenue, income, and profit and loss credits:					
	Express domestic revenue:					
	Rail:					
1	Carload	$11.5	$12.5	$14.3	$14.3	$14.3
2	Less-than-carload	341.9	350.3	403.5	353.3	363.2
3	Total carload and less-than-carload	353.4	362.8	417.8	367.6	377.5
4	Air	42.1	46.5	46.5	46.5	46.5
5	Total express domestic revenues	395.5	409.3	464.3	444.1	424.0
6	Other revenue and income	9.8	13.7	14.1	14.0	13.8
7	Total revenues, income, and profit and loss credits	405.3	423.0	478.4	458.1	437.8
	Operating expenses, deductions from gross income, and profit and loss debits:					
8	Operating expenses	241.8	260.4	260.4	254.9	249.4
9	Express taxes	17.5	17.5	17.5	17.2	16.9
10	Other deductions	1.7	2.2	2.2	2.2	2.2
11	Total expenses, deductions from gross income, and profit and loss debits	261.0	280.1	280.1	274.3	268.5
	Express privileges:					
	Payments to railroads and other carriers except airlines:					
	Rail:					
12	Carload	10.3	11.2	12.9	12.9	12.9
13	Less-than-carload	113.7	110.2	163.9	149.4	134.9
14	Total carload and less-than-carload	124.0	121.4	176.8	162.3	147.8
15	Payments to airlines	20.3	21.5	21.5	21.5	21.5
16	Total payments	144.3	142.9	198.3	183.8	169.3
	Express-privilege ratios:	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*
	Rail:					
17	Carload	90.09	90.00	90.00	90.00	90.00
18	Less-than-carload	33.24	31.46	40.63	38.98	37.15
19	Total carload and less-than-carload	35.08	33.46	42.32	40.82	39.15
20	Air	48.30	46.18	46.18	46.18	46.18
21	Total ratios	36.49	33.78	41.45	40.12	38.66
22	Number of shipments	80,710,438	74,653,000	74,653,000	70,920,350	67,187,700

[1] November 1, 1957, cost level, operating expenses, rents, and taxes other than Federal income taxes.

Ex 33

BEFORE THE

INTERSTATE COMMERCE COMMISSION

NO. MC-C-8862
BRADA MILLER FREIGHT SYSTEM, INC. v.
REXCO, INC. and REA EXPRESS, INC.

NO. MC-C-8864
SCHNEIDER TRANSPORT, INC. v.
REA EXPRESS, INC.

NO. MC-C-8867
AMERICAN TRUCKING ASSOCIATIONS, INC. v.
REA EXPRESS, INC.

NO. MC-C-8874
ASSOCIATED TRUCK LINES, INC. ET AL. v.
REA EXPRESS, INC.

NO. MC-66562 (Sub-No. 2345) (Part No. 181)
REA EXPRESS, INC. - PETITION OF
AMERICAN TRUCKING ASSOCIATIONS, INC.
FOR CANCELLATION OF TEMPORARY AUTHORITIES

NO. MC-66562 (Sub-No. 2308TA)
REA EXPRESS, INC. - PETITION OF
AMERICAN TRUCKING ASSOCIATIONS, INC.
FOR CANCELLATION OF TEMPORARY AUTHORITIES

REQUEST FOR ADMISSION AND/OR STIPULATION OF FACTS

C. Orvis Sowerwine, Trustee in Bankruptcy for the defendant, REA Express, Inc. submits the following assertions of fact and requests that they be admitted as true and/or stipulated by the complainants:

1. REXCO, Inc. is a Delaware corporation, incorporated on December 12, 1957, which is wholly-owned by REA Express, Inc. It is strictly and exclusively a holding company which has no authority of any kind whatsoever from the Interstate Commerce Commission or any similar State regulatory authority.

Respectfully submitted this 22nd day of September, 1976, at Washington, D.C.

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John M. Cleary

John K. Maser III

Dated: September 22, 1976

EXHIBIT 34
Counsel Cleary
(Cf. TR 2356-2393,
2436-2447)

BEFORE THE

INTERSTATE COMMERCE COMMISSION

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No. MC-66562 (Sub-No. 2308 TA)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS,
INC. FOR CANCELLATION OF TEMPORARY AUTHORITIES

FURTHER SUPPLEMENTAL ADMISSIONS AND/OR STIPULATION OF FACTS

C. Orvis Sowerwine, Trustee in Bankruptcy for the defendant, REA Express, Inc., submits the following assertions of fact and requests that they be admitted as true and/or stipulated by the complainants/petitioner as supplemental to and in addition to those assertions in Exhibits 24 and 32, encompasssing paragraphs numbers one (1) through fifty-nine (59): [Paragraphs (59) through (65) have as their source for the truth of the facts stated the findings of fact

in the Report of the Commission, Division 2, in I.&S. Docket No. 7304, Aggregate Rates On Wearing Apparel - Railway Express Agency, 318 I.C.C. 737 (decided January 11, 1963)]

(60) REA had quantity rates on wearing apparel from points in California, Oregon and Washington to all express offices in the United States by rail, which were found not unreasonable or otherwise unlawful in Wearing Apparel, Railway Express Agency, Inc., 301 I.C.C. 177, which rates applied only on prepaid shipments, subject to an aggregate of one or more shipments, tendered and receipted for at one time, from one shipper at one address and consigned to one or more consignees at one or more destinations and subject to 300, 1,500, 2,500 pound minima. (318 I.C.C. at 741)

(61) Many shipppers of wearing apparel had availed themselves of these quantity rates since they became effective in 1955, primarily because they result in lower charges than the normal rates. (318 I.C.C. at 742)

(62) REA established quantity rates on automatic-control devices, minima 300, 1,500, and 2,500 pounds from Minneapolis, Minn. to all express offices in the United States on October 5, 1959. (318 I.C.C. at 742, Note 7)

(63) REA established similar quantity rates on building hardware specialties from Oklahoma City, Ok. on November 3, 1958 and from Kansas City and St. Louis, Mo., Memphis, Tenn. and Dallas, Texas, on September 6, 1960, to all express

offices in the United States. (318 I.C.C. at 742, Note 7)

(64) Those shippers who used the express quantity rates extensively, and supported the publication of such rates, included: The Allied Stores Corporation which owned and operated 87 department stores in 25 states throughout the nation; The International Latex Corporation which manufactured and distributed clothing, dry goods, drugs, and toilet preparations from Dover, Chicago, and Los Angeles; Montgomery Ward & Company which operated 550 retail stores, 612 catalog stores, 9 mail order stores and 4 major distribution centers; the Minneapolis-Honeywell Regulator Company which manufactured automatic-control devices at its main plant in Minneapolis; and the Macklanburg-Ducan Company which manufactured building hardware specialties and shipped them from Oklahoma City, Ok., Kansas City and St. Louis, Mo., Dallas, Texas and Memphis, Tenn. (318 I.C.C. at 742-744)

(65) The aggregate rate on wearing apparel met a very real need of many shippers and there was a steady and substantial increase in REA's wearing-apparel traffic after the proposed rates became effective on June 4, 1960. (318 I.C.C. at 744)

[Paragraphs (66) through (95) have as their source for the truth of the facts stated the findings of fact in the Report of the Commission on oral argument in Ex Parte No.

242, Express Company Terminal Areas, 332 I.C.C. 91 (decided December 5, 1967)]

(66) REA was the sole express company respondent in Ex Parte 242. (332 I.C.C. at 97)

(67) The 1959 express agreement with the railroads, entered after REA had suffered losses for several years, gave it freedom to select any mode of transportation for the movement of express traffic, including motor carriers which it either operated or with which it had contractual arrangements. (332 I.C.C. at 98)

(68) REA's A-4 Tariff set out a description of the pick-up and delivery limits or terminal area of each office where pickup and delivery services are provided, and its A-3 Tariff is a joint directory of express stations indicating the type of service available at its various offices; a blanket special permission, Special Permission Order No. 92238, issued March 2, 1929, allows REA to make changes in these tariffs on one day's notice. (332 I.C.C. at 98)

(69) The principal factors which led to the restructuring of REA's operational approach to the design and utilization of terminal areas at the time of Ex Parte 242 were the construction of modern highways, the flexibility inherent in the greater use of motor vehicles for its traffic, a significant reduction in the passenger-rail service previously used for express service, and the removal in the 1959 Express

Contract of certain strictures as to the required use of railroads. (332 I.C.C. at 98)

(70) The most significant operational change made by REA as a result of these factors at the time of Ex Parte 242 resulted in reducing the number of smaller offices by the consolidation of many into larger and more efficient terminals. As a part of this consolidation REA initiated a "key-point terminal" program - a long-range and well financed construction program with the avowed aim of substituting large "key-point" terminals equipped with modern automated materials handling equipment and capable of processing large volumes of traffic in lieu of numerous smaller offices where operations of this character would not be feasible. (332 I.C.C. at 99)

(71) As a result of the implementation of the "key-point" terminal operations, in 1963, REA operated only two-thirds of the offices maintained in 1958. (332 I.C.C. at 99)

(72) The consolidated terminals were in general centrally located in their service areas rather than tied to specific base municipalities or Ex Parte MC-37 commercial zones. (332 I.C.C. at 99)

(73) Pickup and delivery service was provided by motor vehicle in a manner akin to peddle service. (332 I.C.C. at 99)

(74) This consolidation of offices thus produced a concomitant enlargement of the terminal areas served by existing

offices. (332 I.C.C. at 99)

(75) These newly enlarged terminal areas generally embraced territory previously served from smaller offices on REA's certificated motor regular routes and also included areas adjacent to some offices at which terminal services were not previously available: these larger terminal areas also included points formerly without pickup and delivery service or points previously served by rail alone. (332 I.C.C. at 99)

(76) In some instances REA served points which its tariff indicated were within the confines of one terminal area from a point located in an adjacent terminal area; this evidently having occurred at places somewhat removed from the center of a particular terminal area, such as at points in rural Georgia and on the periphery of REA's Boston terminal area at the time of Ex Parte 242. (332 I.C.C. at 99)

(77) As the result of the operation of peddle-type pickup and delivery service within what are often fairly extensive areas, REA had been providing service to points which were some distance from its terminals, which points may or may not have received pickup and delivery service previously but were generally located in closer proximity to a given REA office. (332 I.C.C. at 99)

(78) At the time of Ex Parte 242, REA had 8,320 offices of which 3,200 provided pickup and delivery service, of the latter, some 750 points had defined terminal areas

which exceeded the MC-37 commercial zone limits, frequently to a significant degree. Approximately half, or 474, of these latter points confined their pickup and delivery service to areas extending less than 10 miles beyond the MC-37 zone; but some of the remainder served points as far away as 50 miles. More specifically, 180 offices provided service to points 10 to 20 miles distance from the MC-37 terminal areas, 73 to points within 30 miles thereof, and the remaining 23 to points between 30 and 50 miles away. (332 I.C.C. at 99-100)

(79) These 750 offices at the time of Ex Parte 242 served approximately 5,000 points having a total population of some 75.4 million and made up 60 percent of the 120.9 million people to whom REA express service was available and a like percentage of respondent's total revenue. (332 I.C.C. at 100)

(80) Some 2,771 points having a total population of 16 million lay beyond the MC-37 areas, and of those points 1,436 lay more than 10 miles beyond the MC-37 areas at the time of Ex Parte 242. (332 I.C.C. at 100)

(81) REA has historically set its own terminal areas by tariff publication; and the extent of the terminal area to be served from a particular office is attributable solely to its management. (332 I.C.C. at 100)

(82) REA keyed the designation of these terminal areas

to a study and appraisal of the shippers' needs in relation to the economic feasibility of the service to be provided in a particular area; more specifically, in making this analysis, a number of factors were considered, including inter alia the density of the population, the nature of the highway system, the volume of traffic, the type of equipment required, and the location of shippers - moreover, the rapid development of suburban areas with their residences, commercial establishments, and industries has had its effect. (332 I.C.C. at 100)

(83) At the time of Ex Parte 242 greater reliance on motor vehicles for line-haul movements had reduced the amount of express traffic moving by rail, although rail continued to be the principal mode used: at that time 87% of the 750 offices whose terminal areas exceeded the MC-37 zones received or dispatched at least some portion of the line-haul traffic handled by motor vehicle. (332 I.C.C. at 100)

(84) REA had in years immediately prior to Ex Parte 242 shown great interest in obtaining, and had actively solicited, large shipments of various commodities to produce what is termed a better "mix" with the smaller shipment traditionally handled: in order to attract this traffic REA had filed aggregate, unit, and volume rates. (332 I.C.C. at 100-101)

(85) From 1959 to the time of Ex Parte 242, the average weight per shipment increased from 45 to 51 pounds. (332 I.C.C. at 101)

(86) At the time of Ex Parte 242 shippers, collectively, utilized and relied upon REA's service for a substantial portion of their shipments: many had specialized or distinct requirements in the handling of small shipments which could not adequately be met by general freight carriers, particularly in the shipment of live animals, fresh citrus fruits, and commodities requiring re-icing, protection against the vagaries of weather, or security afforded by armed guards; other shippers, particularly retail stores and their suppliers, relied on express service for the shipment of goods between supplier or warehouse on the one hand, and retail outlets, on the other, or between retail stores, on the one hand, and individual customers, on the other. (332 I.C.C. at 101)

(87) The Department of Defense, which at the time of Ex Parte 242 was one of the largest users of express service in the world, relied upon REA for the transportation of numerous items from and to various military installations, suppliers, and contractors located throughout the nation. (332 I.C.C. at 101)

(88) At the time of Ex Parte 242, some 200 of the military installations which then received express pickup and delivery service lay beyond then denominated MC-37 terminal areas. (332 I.C.C. at 101)

(89) While many of the shipper intervenors in Ex Parte 242 operated businesses located within then established

MC-37 terminal areas, others did not; and the evidence submitted of the nature of their customers and manner in which they utilized express service conclusively established that they either shipped or received a significant value of shipments destined for delivery beyond the then designated MC-37 terminal areas. (332 I.C.C. at 101)

(90) At the time of Ex Parte 242 an instance of a loss of traffic from a motor common carrier to REA was cited where a motor carrier lost a substantial portion of a shoe manufacturer's account to REA when the latter extended its terminal area a distance of some 10 miles through rural territory to encompass the shoe factory, REA having formerly maintained an office in the shipper's town although it had used rail service rather than motor vehicles in the handling of past shipments for that factory. (332 I.C.C. at 102)

(91) REA's service had certain unique and important attributes which clearly distinguished it from other forms of transportation; express service has a distinctive character with numerous benefits made available to the public which are generally unavailable from other types of carriers: they include inter alia the transportation in express service of general merchandise of almost every description as well as commodities of unusual value, those requiring special care or protection, and those injurious or contaminating to other lading. (332 I.C.C. at 105)

(92) In looking at the real substance of express service, the whole is greater than the sum of the parts, and an atomized approach would be unproductive, lead to confusion, and disregard the integrity of the service that REA provided. (332 I.C.C. at 105-6)

(93) Express is a unique service and its concomitant pick-up and delivery service has become even more important as numerous REA offices located in smaller communities were closed for economic and technological reasons and the availability of the express service previously rendered could only be assured by the consolidation of contiguous territory in larger terminal areas with more efficient facilities. (332 I.C.C. at 106)

(94) Express service constitutes a distinct mode of transportation separate from the underlying modes it may utilize and one which is necessary to meet the demonstrated and often unique needs of a substantial portion of the public. (332 I.C.C. at 110)

(95) Long before the passage of the Motor Carrier Act in 1936, which incorporated Part II into the Interstate Commerce Act, express companies had been utilizing other modes as well as rail service. (332 I.C.C. at 112)

[Paragraphs (97) through (104) have as their source for the truth of the facts stated the findings of fact in the Report of the Commission in Docket No. MC-66562 R-471, REA Express, Inc., Application For Emergency Temporary Authority, 117 M.C.C.

80 (decided Decmeber 7, 1971)]

(96) REA was, until 1968 or 1969, wholly owned by certain railroads. It operated under an agreement to which most of the country's railroads, including the owners of REA, were parties. It, in many respects like the agreements that preceded it, provided, among other things, that REA shall be the exclusive agent of the participating railroads for the conduct of their express business and that REA "shall have no net taxable income other than on real property and equipment sold." The 1959 contract also permitted REA to select at its will any transportation instrumentality, including motor carriers operated by itself or others, for the movement of express traffic. (117 M.C.C. at 82)

(97) Although, historically REA's express service was related to the railroads, it performed also some services in connection and under agreements with most of the country's airlines. REA always operated motor vehicles, performing pickup and delivery service in connection with traffic which also moved by rail or air, and performed line-haul operations on its own behalf. (117 M.C.C. at 82)

(98) The latter "line-haul" service rendered by REA as a motor carrier in its own right resulted from the Commission's granting to REA almost 1,700 motor carrier operating authorities between 1939 and 1962. In 1961 and 1962 alone, REA filed for 254 such rights. The overwhelming

majority of REA's applications were granted. (117 M.C.C. at 82)

(99) During the "pre-Nashua" period, all of REA's operating authorities were limited, in some manner, to the performance of service which is auxiliary to or supplemental of air or railway express service. Additionally, REA's authorities were limited to the transportation of shipments moving on through bills of lading or express receipts, and many were restricted to the transportation of shipments having a prior or subsequent movement by rail. This last restriction followed from REA's pattern of seeking motor carrier authority paralleling discontinued rail service, and to be performed as a substitute for such formerly used rail transportation. The routes granted for this reason normally were relatively short. (117 M.C.C. at 82-83)

(100) Until 1952, virtually no service was performed by REA unless the goods transported had, at some stage of their transit, a rail movement. (117 M.C.C. at 83)

(101) In 1952, however, in an application for motor carrier authority, Railway Express Agency, Incorporated, Extension - Cheneyville, Ill., 53 M.C.C. 807, a statement not necessary to the decision in the case was made to the effect that REA could utilize its certificates issued to enable motor substitution for rail service as though the rail movement actually had taken place. (117 M.C.C. at 83)

(102) Based upon the Cheneyville dictum, REA began a program of expansion into the all-motor field, made possible

because REA combined its 525 rail-restricted certificates with its some 1,100 non-restricted certificates and with each other; REA enjoyed ten years of operations pursuant to this decision until the Cheneyville 'doctrine' was examined by the entire Commission in 1962, Railway Express Agency, Inc., Extension-Nashua, N.H., 91 M.C.C. 311 (1962), and found erroneous. (117 M.C.C. at 83)

(103) In 1962 the Commission indicated that future grants to REA would be limited to service auxiliary to or supplemental of express service of REA (rather than that which is auxiliary to or supplemental of air or railway express service), and invited REA to file an appropriate petition seeking the removal of all existing "rail-haul" restrictions, so as to enable performance of all-motor service. (117 M.C.C. at 83)

(104) In 1964, REA was authorized to continue operating in the all-motor configuration (Petition Requesting Special Handling Of Applications Of Railway Express, Inc., Pendente Lite, order entered February 28, 1974) pending determination of its request, filed shortly thereafter, for the restriction removal. (117 M.C.C. at 83)

(105) By early 1968, REA operated as a motor carrier, free from the limiting factor of rail-haul restrictions; it could describe its own terminal areas for the performance of pickup and delivery services; and it could file rates for the transportation of volume traffic. (117 M.C.C. at 84)

[Paragraphs (106) through (126) have as their source for the truth of the facts stated the findings of fact in the Report of the Commission in Docket No. MC-66562 (Sub-No. 1515), Railway Express Agency, Incorporated, Extension - Nashua, N.H., 91 M.C.C. 311 (decided October 5, 1962)]

(106) In 1962 REA operated in excess of 12,000 motor vehicles in the pickup, delivery, transfer, and line-haul movement of express traffic throughout the United States and maintained more than 11,000 offices for the conduct of its business. (91 M.C.C. at 315)

(107) REA has transported over the routes involved in Sub No. 1687 shipments of fish, fruit, meat, coins, dogs, and, in general, commodities of every description. (91 M.C.C. at 318)

(108) The 1959 contract permits REA to select at its will any transportation instrumentality, including motor carriers operated by itself or others, for the movement of express traffic. (91 M.C.C. at 320)

(109) REA has always operated motor vehicles, performing pickup and delivery service in connection with traffic which also moves by rail or air, and performing line-haul operations on its own behalf. (91 M.C.C. at 320)

(110) The decision in the Determination case (21 M.C.C. 161) established, in essence, that those motor vehicle operations of REA, in interstate or foreign commerce, (1) which involved the transportation of express traffic and were associated with the prior or subsequent movement

by rail in pickup or delivery or transfer service within rail terminal areas, or (2) which were in the partial exemptions of Section 203(b)(7a) or Section 203(b)(8) of the Act, or (3) which involved the transportation of general freight in pickup and delivery or transfer service within rail terminal areas, do not require operating authority under Part II of the Act; but that all other of REA's motor vehicle operations are subject to the economic provisions of Part II. (91 M.C.C. at 320)

(111) Between 1939 and 1962 REA filed approximately 1,700 applications seeking motor carrier authority. A total of 254 motor carrier applications were filed by REA in 1960 and 1961. (91 M.C.C. at 320)

(112) Express service is a relative concept that has its roots in the circumstantial need by the shipping public for a special transportation service, and the responsive duty of common carriers to meet that need. (91 M.C.C. at 324)

(113) Express service is not susceptible of precise definition because it is, by its very nature, a service whose attributes of expendiency, premium rates, and special handling of freight must be judged in comparison with the services and rates provided and assessed usually by common carriers of ordinary freight. (91 M.C.C. at 324)

(114) The Commission has avoided a restrictive commodity interpretation of express service even when such an interpretation has been requested by existing carriers of ordinary

freight in order to allay their concern that REA's express service would overlap unduly their general freight operations. (91 M.C.C. at 325)

(115) While the motor carrier operations of the railroad or its subsidiary must be auxiliary to or supplemental of rail service, REA's motor carrier service must be auxiliary to or supplemental of its express company service. (91 M.C.C. at 329)

(116) Even before the Congress made express companies common carriers, it was recognized that express companies utilized modes of transportation other than rail. (91 M.C.C. at 330)

(117) If REA, as an express company, were not financially related to the railroads, it is doubtful that its motor carrier operations would have to be restricted in the customary manner, for it is the express company's holding out upon which the public relies for the movement of its express traffic. (91 M.C.C. at 330)

(118) The Commission's object has been and is to permit REA to operate to the fullest extent possible as an express company, and to impose in its motor carrier certificate only those restrictions necessary to safeguard against any misuse by the railroads of their control of the express company. (91 M.C.C. at 330)

(119) The use of the words "air" and "railway" in the REA auxiliary and supplemental and future limitation restrictions are of no significant effect. These words are merely an evidentiary reflection of the way in which express traffic usually moves. (91 M.C.C. at 331)

(120) The rail-haul restriction in REA's certificates is utilized simply to reflect the type of need shown in each case for the service proposed. If the evidence establishes a need for interstate traffic to move between points wholly local to the route involved, or if the service proposed is not or cannot be dependent upon connections with other underlying transportation, the rail-haul restriction, or similar language connecting the proposed service with any other underlying service, should be omitted. (91 M.C.C. at 332)

(121) A normal rail-haul restriction appeared in REA's certificates simply because on obtaining its motor carrier authority, REA showed that the express service to be rendered would be performed as an integrated rail-motor movement; no all-motor movement was contemplated. (91 M.C.C. at 332)

(122) The operations for which REA requires authority under Part II of the Act are line-haul motor vehicle operations on its own behalf to replace train service which it, as an express company, formerly utilized. (91 M.C.C. at 333)

(123) In 1962 REA's utilization of passenger trains was decreasing and its reliance on line-haul motor transportation

was increasing. (91 M.C.C. at 338)

(124) The use of the various existing transportation modes and carriers is a quality intrinsic to the operations of an express company. (91 M.C.C. at 340)

(125) When, for any number of reasons, the existing services are not compatible with the transportation of the wide range commodities that move in express service, or with the expedition of special care provided in express movement, there is ample cause for REA to institute motor vehicle operations on its own behalf. (91 M.C.C. at 340)

(126) While the traffic under consideration in Sub Nos. 1515 and 1687 is not traffic which inherently required special handling of the type excluded from the authorities of, or otherwise not normally handled by, the protestants, it was, nevertheless, traffic which could be judged to be bona fide express traffic through its movement, in the past, in REA's premium service. (91 M.C.C. at 341)

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Before the
INTERSTATE COMMERCE COMMISSION
Washington, DC 20423

No. MC-C-8862
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No. MC-C-8864
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No. MC-66562 (Sub-No. 2345) (Part No. 181)
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No. MC-66562 (Sub-No. 2308 TA)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS, INC. FOR CANCELLATION OF TEMPORARY AUTHORITY

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POSTHEARING BRIEF OF COMPLAINANTS

COME NOW Complainants and Petitioners (hereinafter "Complainants"), in response to the ruling of Presiding Administrative Law Judge Richard H. Beddow, and respectfully submit their posthearing brief in support of their requests that a cease and desist order be issued against the operations of the Rexco Division of REA Express, Inc. and that the Commission exercise its jurisdiction and summarily revoke all temporary authority issued to REA Express, Inc. In particular, Complainants further request that the temporary

authority issued to REA, Express Inc., Docket No. MC-66562 (Sub-No. 2308 TA) be cancelled and the corresponding permanent authority application in Docket No. MC-66562 (Sub-No. 2345, Part No. 181) be dismissed. In support thereof, Complainants respectfully state as follows:

I.

INTRODUCTORY STATEMENT

In these consolidated proceedings, which encompassed over three weeks of oral hearing, Complainants, as well as the Bureau of Enforcement, submitted extensive, uncontroverted evidence concerning the present operations of REA Express, Inc. and its Rexco Division (hereinafter "REA" and "Rexco"). It is Complainants' position that these operations have been demonstrated to be patently illegal and are in flagrant and willful violation of the terms and conditions contained in the various certificates of public convenience and necessity, and temporary authorities held by REA. Furthermore, the Rexco operations have been shown to be in willful violation of the Interstate Commerce Act, and the rules and regulations of the Commission. In addition, it has been shown that the Rexco operations are being conducted in willful disregard of the rules and regulations of the Department of Transportation. Therefore, based on this evidence, Complainants respectfully request the Commission to act immediately to require the cessation of these illegal operations.

The Complainants further request the Commission cancel all outstanding temporary authorities held by REA on the grounds that REA is not only incapable of rendering a reasonably continuous and adequate service to the public of the type authorized by these authorities, but has failed to maintain compliance with relevant statutory and Commission regulations as required by those temporary authorities. Additionally, Complainants contend that the deliberate failure of REA Express to prosecute the corresponding permanent authority applications, some of which are up to 15 years old, justifies and requires dismissal of all such applications.

Finally, insofar as REA's "hub" application is particularly concerned, Docket No. MC-66562 (Sub-No. 2308 TA) and (Sub-No. 2345, Part No. 181), Complainants[1/] refer the Commission's attention to the subsequent application filed by REA in Docket No. MC-66562 (Sub-No. 2337 TA), wherein REA repudiated the hub concept as inefficient and uneconomical, and chose not to prosecute the pending application, but instead

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1/ On December 1, 1975, the American Trucking Associations, Inc. filed its Petition Seeking Dismissal of the MC-66562 (Sub-No. 2314) permanent authority application (now (Sub-No. 2345, Part 181)) and further requested the cancellation of the corresponding Sub-No. 2308 temporary authority, otherwise known as the hub authority. By order served April 8, 1976, the above Petition and Complaint were consolidated with the various other Complaints filed in this proceeding under lead Docket MC-C-8862, Brada Miller Freight System, Inc. v. Rexco, Inc. and REA Express, Inc. Although Complainants did not initially seek to intervene in the ATA petition, they are in accord with the relief sought therein. Thus, the term "Complainants" will be used throughout as a matter of convenience when we are discussing the issues raised in the ATA petition.

requested irregular route authority. (See Exhibits 3, 4 and 5.) It is Complainants' position that the initial failure to prosecute and the subsequent explicit repudiation by REA of the hub concept compel the conclusion that the public interest will not be served by permitting operations under the "temporary" authority to continue. Therefore, Complainants specifically ask the Commission to cancel the outstanding temporary authority issued by REA in Docket No. MC-66562 (Sub-No. 2308 TA) and to dismiss the corresponding permanent application in Docket No. MC-66562 (Sub-No. 2345, Part No. 181).

II.

THE EVIDENCE

Pursuant to the Commission's order served July 29, 1976, Complainants in this proceeding, to the extent possible on August 23, 1976, presented their direct evidence and argument. This presentation was contained in two volumes and consisted of the "Argument and Evidence of Complainants" and forty-six appendices.[2/] The forty-six appendices comprised the bulk of Complainants' direct testimony and included the prepared testimony of seven former Rexco sales agents,[3/] one former employee of a Rexco sales agent,[4/] two former corporate officers of REA Express, Inc.,[5/] twenty-two motor carrier witnesses,[6/] and the Director of Safety of the American Trucking Associations, Inc.[7/] In addition, certain documentary evidence was submitted, including copies of the Rexco dispatch sheets,[3/] a Rexco trip lease,[9/] four abstracts showing the continuous back-to-back

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2/ At the hearing the whole presentation was identified as Exhibit No. 1.

3/ See Exhibit 1, Appendices 3, 4, 5, 6, 7 and 8.

4/ See Exhibit 1, Appendix 29.

5/ See Exhibit 1, Appendices 13 and 14.

6/ See Exhibit 1, Appendices 15, 16, 17, 26, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45.

7/ See Exhibit 1, Appendix 24

8/ Exhibit 1, Appendix 47.

9/ Exhibit 1, Appendix 9.

nature of Rexco trip leases[10/] and copies of REA pleadings in prior Commission proceedings.[11/]

At the oral hearing which commenced on August 30, 1976, Complainants supplemented their original evidence with additional direct testimony and with further documentary evidence.[12/] Subsequently the direct testimony was the subject of lengthy cross-examination. However, even a cursory review of that evidence and cross-examination will clearly show that the direct testimony stands completely unrebutted and uncontroverted. Furthermore, the evidence submitted by Defendants in no way discredits the direct testimony of Complainants' witnesses, but instead merely corroborates their testimony.

The first group of witnesses to testify were former Rexco sales agents. These witnesses were individuals responsible for the solicitation of shipments and the securing of drivers and equipment for Rexco. Through their unchallenged testimony, Complainants have set forth in detail Rexco's method of operations. Also, these witnesses testified to the lack of control exercised by Rexco over its operations and to Rexco's refusal to provide its sales agents with any information concerning the authorities held by REA - including the fact that REA was a regular route carrier. Rather than discuss their

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10/ Exhibit 1, Appendices 18, 19, 20 and 21.

11/ Exhibit 1, Appendices 22 and 23.

12/ A complete list of witnesses is attached as Appendix A. This list also reflects the pages of the transcript covering their testimony.

evidence at length at this time, it will be considered in depth in the portion of this Brief containing a discussion of the criteria of a bona fide express service in order to demonstrate that the Rexco operations are a deliberate, willful and illegal departure from the terms of REA's authorities.

The next group of witnesses consisted of former employees of REA. These included Mr. Robert J. Franco, who from 1961 through 1964 was responsible for business development and corporate planning, as well as market strategy for REA. In addition, from 1964 through 1967, he was Vice-President, General Manager and and Chief Operating Officer for REA's Pacific Region which covered the thirteen western states, Canada and Hawaii. His direct testimony is found in Exhibit 1, Appendix 13, and in the Transcript (hereinafter referred to as "Tr.") at pp. 567-595.

The other former employee was Mr. L. R. Howard, whose employment with REA extended from 1936 to 1971. While with REA Mr. Howard's duties ran the gamut from "Platform Man" to "Regional Vice-President, Regional Manager, Atlanta Region" with responsibility for REA's operations in the states of Georgia, Florida, Alabama and Mississippi. His direct testimony is found in Exhibit 1, Appendix 14, and Tr., at pp. 1263-A through 1274.

These witnesses in their testimony have provided the Commission with an historical analysis of the traditional REA operations both from a marketing and an operational standpoint.

Their testimony thus provides a vivid backdrop against which the Rexco operations may be contrasted.

The next group of witnesses presented by the Complainants consisted of the spokesmen of the various motor carriers that are participating in this proceeding. Their testimony shows the adverse effect of the Rexco operations on the operations of these duly authorized carriers. In addition, Complainants have through these witnesses developed certain comparisons between the level of rates published by Rexco and those published by other carriers which clearly show that the Rexco rates are far below those of competing carriers. Finally, the motor carrier witnesses have presented evidence to show specific instances where they have suffered diversion of shipments to Rexco as a result of the depressed, and noncompensatory, level of rates maintained by Rexco.[13/]

Complainants also presented the testimony of Mr. William E. Johns, the Director of the American Trucking Associations, Inc., Safety Department. Mr. Johns testified concerning violations of the Safety Regulations of the Department of Transportation as reflected on the logs submitted to Rexco by the various drivers. In particular, Mr. Johns focused on possible violations of the Bureau of Motor Carrier Safety's hours of service regulations as published at 49 C.F.R. §395.

13/ In addition to those carrier witnesses that were permitted to testify, the presiding Administrative Law Judge held that other similar witnesses who presented prepared statements would not be permitted to testify and be cross-examined. Complainants continue to object to this ruling.

His direct testimony is found at Exhibit 1, Appendix 24, and Tr., pp. 1417-1435 and 1483-1488.

In addition to those witnesses presented by Complainants, the Bureau of Enforcement also presented evidence concerning the Rexco operations. Its first witness was Joseph Carretta, who is presently employed as a Rexco sales agent. Significantly, his testimony corroborates the evidence previously introduced by those sales agents sponsored by Complainants. Indeed, Mr. Caretta candidly admitted (Tr., p. 1687) that he had not, in response to any written instruction from Rexco, changed the basic method of operation of his agency. See Tr., pp. 1650-1688.

The other witness introduced by the Bureau was Mr. Louis P. Bussolati, an investigator with the Commission's Bureau of Operations. Again it must be stressed that this witness' testimony simply corroborated the unrebutted testimony of the witnesses introduced by Complainants. His testimony is found in Exhibit 18, and Tr., pp. 1896-1984, 1994-2077 and 2094-2264.

Before proceeding to the REA evidence, it should be observed that the above testimony contains all of the the evidence of record concerning the Rexco operations. It must be emphasized that REA did not present any witness with knowledge of the Rexco operation, but instead limited its evidence to a presentation of certain facts about past REA operations.

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REA, as part of its defense, presented two former REA employees. They were Thomas G. Miano and Jay R. Summer. Mr. Miano, who was the Senior Tariff Compiler for REA, presented testimony concerning the publication of a limited number of volume rates previously established by REA for particular shippers. However, he also testified (Tr., pp. 2336-2338) that REA never published a tariff containing truckload rates on a mileage scale with general applicability. This, of course, repudiates any claim that the Rexco tariff has an historical antecedent in the past REA tariffs. Mr. Miano's testimony is found at Tr., pp. 2315-2356.

Defendants' other witness, Mr. Jay R. Sumner, REA's former System Manager, Line-Haul Services, presented testimony concerning REA's line-haul operations. As a review of that testimony will show, it clearly corroborates the previous testimony of Mr. Franco and Mr. Howard, and leaves no doubt that the Rexco operation is an abrupt departure from the type of operation previously performed by REA. See Exhibit 31 and Tr., pp. 2398-2436.

In addition to the testimony presented by the two witnesses, Defendants have submitted so-called "Admissions and/or Stipulations of Fact" as "evidence" in this proceeding over the repeated objections of Complainants.[14/] These

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14/ As counsel for Defendants unequivocally stated (Tr., p. 2364), "I want these requests for admission considered as request for a fact on this record, not just that it was a statement that the Commission made in some case. It is a request of a finding of fact that can be admitted in this record to support further conclusions and arguments on this record."

"Admissions" consist of 126 paragraphs containing isolated statements taken from previous Commission reports which Defendants claim must be admitted as "facts" in the instant proceeding. While Complainants will admit that the paragraphs do contain statements of the Commission's findings in other proceedings and can, therefore, be used as the basis of an argument, they strongly object to any ruling that those findings are "facts" proven on this record for the reason that such a ruling deprives Complainants of due process since they would be denied the right to cross-examination. Indeed, based on this consideration, the Commission in Coastal Tank Lines, Inc., Ext. - West Virginia, 108 M.C.C. 190, 194-195 (1968) recognized "that although we may take official notice of other Commission proceedings and the findings therein, we may not give consideration to evidence contained in the records in those proceedings. See Watson Bros. Transp. Co., Inc. - Purchase - S. & C. Transport, 70 M.C.C. 317, 318; St. Johnsbury Trucking Co., Inc., Extension - Heavy Hauling, 53 M.C.C. 277, 289; and Consolidated Freightways, Inc. - Purchase - Reymers, 36 M.C.C. 623, 624. If the Commission will not give consideration to "evidence" contained in other proceedings, it should follow that "restatements" of evidence will likewise not be considered. In short, Defendants may not hide behind isolated sentences and scattered dictum contained in prior Commission proceedings. If REA had a proper defense for its Rexco operation, it was incumbent on it to advance that defense

at the oral hearing held in this proceeding in such a manner that Complainants would have been given an opportunity to exercise their right to cross-examination.

In conclusion, it is Complainants' position that the evidence of record establishes beyond a shadow of doubt that the Rexco operation has been conducted in flagrant and willful disregard of the rules and regulations of the Commission and the U.S. Department of Transportation. Furthermore, it demonstrates that there has been a flagrant refusal by REA and its Rexco division to comply with the terms and conditions of its authorities and with the lawful orders and reports of the Commission which constitute the vast body of law interpreting REA's operating authority. Based on this totally uncontroverted and unrebutted evidence, the Commission should find that REA has flagrantly, willfully and illegally performed operations in interstate commerce which also exceeded the scope of its authorities and it is, therefore, unfit. Accordingly, the Commission should immediately revoke all outstanding temporary authorities held by REA.

III.

ARGUMENT

A.

THE COMMISSION SHOULD IMMEDIATELY ISSUE A CEASE AND DESIST ORDER AGAINST THE REXCO OPERATIONS

1. The Criteria of an Express Service

As previously noted,[14/] the Commission has not precisely defined "express service" as that term is used in REA's authorities. It has recognized, however, that express service is "unique" and different from the "ordinary" freight service offered by most motor carriers.[15/] In addition, the Commission has stated that express service must be defined through a comparative process. As stated in Railway Express Agency, Inc., Extension - Nashua, N. H., 91 M.C.C. 311, 324 (1962):

> From this view it follows that "express service" is not susceptible of precise definition because it is, by its very nature, a service whose attributes of expediency, premium rates, and special handling of freight must be judged in comparison with the services and rates provided and assessed usually by common carriers of ordinary freight.

14/ Argument and Evidence of Complainants, pp. 21-25, Exhibit 1.

15/ See, e.g., Railway Express Agency, Inc., Extension - West Unity - Middletown, 31 M.C.C. 363, 371 (1941); Railway Express Agency, Inc., Extension - Durant - Kosciusko, 34 M.C.C. 111, 114 (1942); and Railway Express Agency, Inc., Extension - Mount Airy, 31 M.C.C. 343, 350 (1941). Also see Transportation Activities of Arrowhead Freight Lines, Ltd., 63 M.C.C. 573, 579 (1955); and Express Company Terminal Areas, 332 I.C.C. 91, 105 (1967).

Nevertheless, the Commission has established certain guidelines within which express service must exist. For example, in Transportation Activities of Arrowhead Freight Lines, Ltd., 63 M.C.C. 573, 575-582 (1955), the Commission explored at length the basic criteria of a bona fide express service.[16/] These criteria were then summarized as follows:

> Summary.--Succinctly stated the rendition of a bona-fide express service by property carriers with authority to transport general commodities requires such carriers (1) to provide a bona fide holding out together with the ability to transport any commodity which may be safely transported in ordinary van-type equipment, including those requiring a maximum degree of care or security or both,

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16/ The Arrowhead case principles were subsequently reaffirmed by the Commission in both the Nashua case (91 M.C.C. at 322-327) and REA Express, Inc., Application for ETA, 117 M.C.C. 80, 88-89 (1971). Furthermore, in Nashua the Commission specifically removed any doubts whether its holding in Arrowhead applied with full force to REA's certificates when it concluded, 91 M.C.C. at 326-327:

> It is clear that the Arrowhead and Mistletoe interpretations represent no reversal of any prior conclusions; are exemplary of conditions that have existed since the inception of transportation by motor vehicle of express; and are illustrative of the meaning of the term "general commodities moving in express service" as we have always intended it to apply in certificates issued by us.
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> * * *
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> In summary, we believe that the existing definitions of "general commodities moving in express service," or similar terms, are a realistic and practical reflection of the nature of express service as it has always been conceived of by us; apply with full force to REA's certificates; and have not been shown to be in need of alteration or change at this time.

> (2) to provide such care or security or both as the inherent characteristics of the commodities making up the shipment which are accepted may require, (3) to provide equally expeditious transportation and careful handling for all accepted shipments, regardless of their volume, special demands, or value, from the point of pickup to the point of delivery, (4) to perform actual operations between all authorized points upon firmly established schedules allowing minimum practicable highway transit time and providing fixed delivery times which are available to actual and potential shippers at authorized origins and which in practice are not changed except after substantial notice to the general public, and (5) to use relatively simple billing, rate structures, and rate publications whereby the rates and charges for the services offered and performed may easily be determined with a minimum of delay.

In addition, the Commission further noted the relationship of "premium" rates to express service, id., at 582:

> It is readily apparent in the foregoing summary that express carrier provide additional services under less favorable operating conditions than do carriers providing ordinary freight services. In the circumstances it follows that the level of their rates for express service is necessarily higher. The fact that express carriers, charging premium rates, are able to compete with and survive the competition of the carriers providing an ordinary freight service confirms the higher type of service expected of, and supplied by them. Thus while premium rates are, of course, not part of the service of express carriers, they nevertheless are an attribute of such service without which it is unlikely that any service should be so classified. On this point in the prior report [61 M.C.C. 131] it was said at page 140:

> *it would appear that carriers providing express service should not establish the same or substantially the same rates as carriers of general freight. On the contrary their premium service should be bona fide premium-priced if its character as such is to be above challenge.*

The express service criteria were also briefly summarized by the Commission in REA Express, Inc., Application for ETA, supra, 117 M.C.C. 80, wherein REA was denied authority to restructure its operations into an irregular route express service. There (117 M.C.C. 88-89) it was stated:

> . . . The basic indicia of express service have been set forth in previous Commission reports.[19] One index of express service is that the carrier must perform actual operations between all authorized points upon firmly established schedules allowing minimum practicable highway transit time and providing fixed delivery times which are available to actual and potential shippers at authorized origins which in practice are not changed, except after substantial notice to the general public. In essence, this means that express service, whatever else it may be, must be performed as an expedited, regular-route service. Such service is operationally inconsistent with irregular-route service which, in the usual concept, envisions a "call-on-demand," unscheduled operation. This same issue arose in the Nashua case and, beginning at page 322, it was discussed at some length. Thus, REA has been well advised that its basic proposal contains inconsistent terms and yet we still have not been presented with a rationalization for the inconsistency or any reason for this Commission to modify its previous standard of express service.
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> 19 Transportation Activities of Arrowhead Freight Lines, 63 M.C.C. 573, 581 (1955).

In short, there can be no question but that the Commission's many grants of "express" authority to REA were premised on certain well-established and clearly understood requirements, on the one hand, and, on the other, limitations as to the scope of authorized operations. Indeed, REA's predecessor in Railway Express Agency, Inc., Extension - Newport, Vermont, 84 M.C.C. 435, 437 (1961), even argued "that 'general commodities, moving in express service' are words of art clearly defined by prior Commission decisions."

Nevertheless, Respondent, as has been conclusively demonstrated, has deliberately ignored these limitations and requirements, and in callous disregard for the Commission's criteria has launched an entirely new operation that bears not the slightest resemblance to that traditionally performed by REA.[17/] While Respondent has attempted to cloak these operations with a mantle of legitimacy by citing isolated sentences from various Commission reports, it becomes readily apparent to even the most casual observer that Respondent's operations are diametrically opposed to the overall thrust of the Commission's decisions. Thus, while it is true that the Commission at various times permitted certain liberties

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17/ Although Respondent repeatedly asserted at oral hearing that Complainants were not considering the "whole animal" by focusing on the Rexco operations, it is submitted that Respondent fails to comprehend the simple fact that Rexco is all that remains of REA. Therefore, it alone can be compared with other carriers to determine whether it fits within the criteria established by the Commission.

to be taken by REA and its predecessors with respect to establishing certain operations that did not explicitly satisfy each of the above "express" criteria, the Commission never intended to authorize REA to establish an operation that cannot be differentiated from those of any ordinary irregular route motor carrier. Any doubts in this respect were resolved by the Commission's observation in REA Express, Inc., Application for ETA, supra, 117 M.C.C. at 89, that:

> If REA is to forego completely its regular-route operations, it well may be that it will evolve into no more than an ordinary motor common carrier of small shipments, and cease to exist as an express company. Should this be the case, REA, as a motor common carrier, could not avail itself of express company terminal areas, but would be limited to those permitted carriers of its new status. The effect of this upon REA's operations cannot be determined upon the record before us.

Finally, Complainants respectfully submit there is absolutely no merit in Respondent's attempts to bypass these criteria by drawing upon isolated sentences to claim that REA could and did offer certain services. Respondent's approach, which is largely focused on permitted abberations, fails to grasp the basic thrust of the Commission's decisions in granting REA vast territorial and commodity authority, and, in effect, speciously converts the exception into the rule. In other words, while the Commission did not restrict REA's authorities and tariffs against the handling of truckload shipments on the assumption "that the commodity description

'general commodities moving in express service' is sufficient to limit [REA's] operation to its normal range,"[18] a rational interpretation of the many cases involving REA leaves no doubt that the Commission did not intend to create a situation where the average weight per shipment handled by REA would exceed 30,000 pounds.[19] As the Commission in Railway Express Agency, Inc., Extension - Nashua, N. H., supra, 91 M.C.C. at 324, plainly stated:

> . . . this Commission has always intended the term "express service" to mean generally the expedited handling of small-parcel traffic which common carriers of ordinary freight do not desire usually or are not able to perform. It is a service superior to that rendered as a rule by common carriers of general freight, and thus requires the payment of premium charges.

The Rexco approach which simply ignores such general statements while seizing upon isolated sentences and scattered dictum is patently specious and must be rejected.

18/ See Railway Express Agency, Inc., Ext. - Chicago - Cincinnati, 98 M.C.C. 92, 99 (1965). Also see Freight, All Kinds, L.C.L. Container Charges - U.S.A., 323 I.C.C. 468 (1964), and Railway Express Agency, Inc., Ext. - Traverse City, Mich., 96 M.C.C. 727.

19/ Nor can it be imagined that the Commission intended to authorize a service that in effect embargoes all shipments under 16,000 pounds. See Exhibit 1, Appendix 12, pages 41, 42 and 42-A. Furthermore, as testified at Exhibit 18, p. 18, the average weight of the approximate 700 shipments examined during the Commission's investigation was 35,000 to 35,500 pounds. Also, of the 6,000 Rexco freight bills screened by Commission investigators, only 17 were discovered showing the movement of shipments weighing less than 3,700 pounds.

2. The Rexco Operations Fail to Satisfy the Criteria of an Express Service

It is respectfully submitted that the evidence presented in this proceeding demonstrates conclusively that the Rexco operation in all respects fails to satisfy the basic criteria of a bona fide express service. Therefore, they do not fall within the scope of REA's authorized operations and are in violation of Section 203(c) and 206(a)(1) of the Act.

(a) There is no bona fide holding out to provide express service for all commodities.

As a starting point it should be carefully noted that the Rexco division of REA does not in any manner hold itself out to transport all commodities. Rather, it has through its published tariff specifically embargoed a wide range of commodities.[20/] Item 220 of the tariff specifically provides that the rates and charges named in the tariff will not apply on a long list of commodities, including live animals, perishable products, bullion, coin and other items of unusual value. In other words, the rates do not apply to commodities requiring special care and protection, even though such items have been repeatedly identified by the Commission in its reports[21/] and by REA in its applications[22/]

20/ See Exhibit 1, Appendix 12, Rexco Commodity Tariff 85, I.C.C. No. 153.

21/ See, e.g., Railway Express Agency, Inc., Ext. - Nashua, N. H., supra, 91 M.C.C. at 315.

22/ See Exhibit 2, Statement of Acts, p. 1; Exhibit 4, pp. 7-8; and Exhibit 5, pp. 5-6. Also see Tr., p. 1273.

as being the type of commodities that made REA's service unique and thereby justified the Commission's grant of REA's general commodity express authority.

In addition, the Rexco tariff by its minimum weight requirements embargoes all small shipments which the Commission has emphasized as being the core of express service. This fact alone belies any suggestion that the existing REA operation is tailored to meet the needs of the nation's small shippers.

In this respect the Commission's attention is directed to items 1000 to 1260, inclusive, and to 1500 of the Rexco tariff which reflect a scale of rates which impose at least a minimum weight of 16,000 pounds. However, even this is misleading since the total charges on a shipment weighing 16,000 pounds will be in most instances within two or three dollars of the total charges on a shipment weighing 40,000 pounds.[23/]

Thus, even if a shipper were to tender Rexco a shipment weighing 1,000 pounds, he would be required to pay a charge equal to that paid by a shipper tendering 40,000 pounds of the same commodity. In short, the Rexco tariff in effect imposes a minimum weight of 40,000 pounds and thereby

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23/ For example, item 1190, which applies on shipments of iron and steel, provides a rate of $1.06 per 100 pounds for a shipment of 24,000 pounds moving 300 miles or $254.40. At the same time a rate of 64 cents will apply on a similar shipment weighing 40,000 pounds moving the same distance resulting in charges of $256.00.

clearly violates the basic concept of express service and its emphasis on the transportation of small shipments.[24/]

A further indication of Rexco's disregard for the small shipments problem is found in the statement of several former Rexco sales agents who testified that they were instructed by Rexco not to solicit LTL traffic. See Exhibit 1, Appendix 3, p. 3; Appendix 4, p. 4; Appendix 7, p. 1; and Appendix 8, p. 2. As a result of these steps, there can be no question but that REA, through its Rexco division, has abandoned any pretense of meeting the needs of the nation's small shippers and has instead illegally limited its holding out to a specified variety of commodities moving in truckload service.

(b) Rexco has not limited its holding out to commodities which may be safely transported in ordinary van-type equipment.

In this proceeding Complainants have demonstrated that Rexco, without authorization from the Commission, has included within its holding out of service the transportation of commodities which, because of their inherent qualities must be transported in other than ordinary van equipment. It

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24/ In addition, the Rexco tariff establishes charges on 40,000 pounds of iron and steel that are identical to 40,000 pounds of any other commodity for which a rate is published moving the same distance. As such, the Rexco rates establish various one-factor rates that are applicable regardless of the commodity. It is Complainants' position that this practice is in violation of the requirement that just and reasonable classifications be maintained under Sections 11(4) and 216(b) of the Act, 49 U.S.C. §§1(4) and 312(b).

is Complainants' position that this expansion of REA's service to encompass the transportation of such commodities that may not be safely transported in ordinary van equipment is unwarranted, illegal and contrary to the Commission's oft-stated intention to limit REA's motor carrier service to one that would be commensurate with its historical operations. Furthermore, it is Complainants' position that this step is yet another indication of the total unwillingness of the present holders of the REA authorities to confine their continuing operations to areas within the traditional scope of express service.

As cogently explained by the Commission in the Arrowhead case, 63 M.C.C. at 578:

> . . . Finally on the matter of vehicular equipment it is initially the commodity or commodities rather than the service being provided which dictates the type of equipment to be used. Because express carriers hold out to provide their premium service for small lots of a wide variety of commodities, their equipment must, of necessity, be of the nonspecialized or ordinary type which is capable of essential protection with a corresponding ability to transport expeditiously the maximum possible range of commodities.

Rexco, however, has deliberately disregarded this requirement under the guise that as an alleged express company it can handle all commodities regardless of whether they can be safely transported in ordinary van equipment. While the Commission's language may not specifically prohibit the occasional use of flatbed equipment when required by an unusual shipment, it must be remembered that the Commission's

decisions were not rendered in a vacuum. In the first place, the Commission did not anticipate or sanction REA's transportation of items such as steel coils which must be handled on flatbed equipment. Rather, the Commission granted motor authority to REA in order to enable it "to provide the same services by motor vehicle exclusively that it formerly was able to make available in connection with the use of passenger train service."[25/] Coils and girders of steel were never transported in an express rail car.

The Commission's intent to limit REA's service is also reflected in its imposition of restrictions such as those imposed in Railway Express Agency, Inc., Extension - Durant - Kosciusko, 34 M.C.C. 111, 115 (1942), wherein the Commission reasoned as follows:

> . . . It is intended, however, to grant authority only for the continuance by motor vehicle of the service heretofore conducted by rail, and, in order to limit the operations to be performed to the intended scope, we shall impose certain conditions designed to restrict applicant to the performance of a service which is auxiliary to, or supplemental of, railway express service. Compare Railway Exp. Agency, Inc., Extension - Thomaston, 31 M.C.C. 337, and Railway Exp. Agency, Inc., Extension - West Warwick, R. I., 31 M.C.C. 332.

In other words, the Commission did not intend to give REA the discretion to expand its service at will, but clearly intended

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25/ Railway Express Agency, Inc., Extension - Nashua, supra, 91 M.C.C. at 321; Railway Express Agency, Inc., Extension - Newport, Vt., supra, 84 M.C.C. at 441; and Railway Express Agency, Inc., Extension - Washington - Harrisonburg, 33 M.C.C. 671, 674 (1942).

to impose certain implicit limitations. Had it been otherwise, the Commission would have granted, rather than denied, its application for nationwide irregular route authority.

Secondly, it should be noted that REA accepted these limitations and, therefore, never operated any flatbed equipment. As the Commission observed in Railway Express Agency, Inc., Ext. - West Unity - Middletown, supra, 31 M.C.C. at 365:

> Applicant performs the motor-vehicle service with its own vehicles and drivers. The vehicles include straight trucks and tractor-semitrailer units, with rated capacities of 1-1/2 to 3 tons. They have steel van-type bodies and are equipped with heaters and ventilators for the care of perishable commodities, and with safes for the protection of articles of unusual value.

The Commission's prior finding was corroborated herein by the testimony of the former Chief Operating Officer for REA's Pacific Region and by the former Vice President and Regional Manager for the Atlanta Region. Both witnesses testified that REA never operated any flatbed equipment, but instead limited its service to express traffic which could be transported in ordinary van equipment. See Exhibit 1, Appendix 13, p. 5, Appendix 14, p. 2; and Tr., pp. 1265, 1266 and 1271.

Nevertheless, it has been established by the testimony of several former Rexco sales agents who were responsible for solicitation of freight that Rexco definitely solicited and transported a number of commodities that could not be

safely transported in ordinary van equipment. Included in this category were steel coils, fiberglass reinforced plastic arches and certain machinery which, because of their inherent nature, had to be transported on flatbed equipment.[26/] Indeed, if steel coils, such as those listed in Exhibit 18, Appendix A, shipment 25, weighing over 43,000 pounds are transported, the regulations of the Federal Highway Administration, as set forth in 49 C.F.R. §393.100 et seq., require the vehicle to have certain tiedown assemblies and other safety features that are simply not found in ordinary van equipment. As Mr. Stanley Brown, a former Rexco sales agent, testified on cross-examination in response to the request (Tr., p. 442) to identify "commodities that by their nature physically could not possibly be handled in van equipment":

> A. According to Interstate Commerce and Safety Regulations anything of a certain size and weight will be fastened down on a truck. And there is no way in a van to fasten down a piece of machinery and hold it, of any size or weight. (Tr., p. 443)[27/]

He then expanded this answer as follows (Tr., p. 444):

> Q. Mr. Brown, in responding to my questions regarding van equipment, do you make a distinction between what might be termed "ordinary van equipment," and some sort of special van equipment?
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> A. Very few special pieces of van equipment on the road with any carrier.

26/ See, e.g., Tr., pp. 119, 259, 398, 443, 444, 513 and 2067.

27/ Also see the testimony of Mary Ann Campbell, Tr., pp. 236-237 and 259.

Q. Well, what do you mean by "special equipment?"

A. There is not one van in a hundred that has rings on the floor for using tiedowns, that could be used to secure the commodities that you are talking about. It is not common practice at all. I do not believe I have a man hauling for me in the entire system--and I have a lot of them--that have a van with means to secure the freight in a van. Like you are talking, it would have to almost be special equipment to handle that stuff in a van.

Finally, when the subject came up yet another time (Tr., p. 513), he answered as follows:

A. It is possible to handle some iron and steel articles in van equipment, but very little.

Q. The pieces of iron and steel -- or the iron and steel articles that could not be handled in van equipment would be pieces in excess of the dimension of the van, right?

A. No sir. Coiled steel cannot be hauled in a van because it has to be tied down.

Sheet steel, which is on pallets and banded on there, it must be tied down.

Q. Is it your testimony that no vans can tie down any internal contents? You cannot tie down contents in a van?

A. I have never seen but one or two vans in 40 years of experience on the highway that had tie downs in them. Open tops, drag tops as they call them, yes. Vans, no.

To the extent that REA is transporting such items, it is operating beyond the scope of its authority and must be

required to cease and desist such activities immediately. REA, which has never demonstrated that the public convenience and necessity require its services outside of the small van-type shipments should, therefore, be prohibited from transporting commodities that cannot be safely transported in such equipment. To hold otherwise will be extremely detrimental to the continuing viability of authorized carriers who have demonstrated a need for their services.

(c) Rexco does not perform actual operations between all authorized points or upon firmly established schedules.

As observed by the Commission in REA Express, Inc., Application for ETA, supra, 117 M.C.C. at 89:

> [O]ne index of express service is that the carrier must perform actual operations between all authorized points upon firmly established schedules allowing minimum practicable highway transit time and providing fixed delivery times which are available to actual and potential shippers at authorized origins which in practice are not changed, except after substantial notice to the general public. (Emphasis in original.)

Rexco's operations satisfy none of these criteria.

Initially, it is uncontroverted that Rexco does not operate upon any firmly established schedules. As various Rexco sales agents testified, they did not have firmly established schedules of pickups, deliveries or line haul movements,[28/] except in the sense that a shipper would call

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28/ See Exhibit 1, Appendices 3 at p. 6; 4 at p. 7; 5 at p. 4; 6 at p. 4; 7 at p. 2; 8 at p. 3; and 29 at p. 3. Also see Tr., pp. 238 and 531.

and advise them that a load would be available for pickup.[29] In other words, scheduling resulted from the shippers' initiative and not from Rexco's. This, of course is the essence of a call-on-demand service[30] and is clearly distinguishable from the prior REA service where shippers were given copies of REA's schedules. See Tr., pp. 1357-1358. Also, it should be noted that even where the shippers did give advance notice that they would have a shipment available for pickup, there was no guarantee that Rexco would have equipment. If there were drivers available at the time loads became available, and they were willing to make the haul,[31] then they were given the load. As the agents have also testified, Rexco equipment frequently was not available; therefore, they were unable to meet their commitment.[32] This

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29/ See Tr., pp. 175, 368, 522, 531 and 552.

30/ See Exhibit 1, Appendices 3 at p. 6; 4 at p. 8; 5 at p. 3; 6 at p. 4; and 8 at p. 3.

31/ Because of Rexco's depressed rates, the sales agents often found it difficult to induce drivers to take the load (Exhibit 1, Appendix 29, at p. 2, and Appendix 5, at p. 2). Instead, they frequently found that drivers would prefer to wait several hours for a load which would generate more income than the Rexco load. This very situation prompted the Supreme Court in American Trucking Associations, Inc. v. United States, 344 U.S. 298, 305 (1953), to observe that "[t]he carrier engaged in leasing practice is at the mercy of the cost and supply of exempt equipment available to him. Hence, he may at times find himself unable to undertake shipping obligations because no trucks are available willing to make a relatively unprofitable trip or to assume the burdens of less-than-carload service." This inability to guarantee a truck further dispels any idea that Rexco was offering either a scheduled or expedited service.

32/ See Exhibit 1, Appendix 3, at p. 5, Appendix 4, at p. 6; and Tr., pp. 269 and 522.

situation, of course, stems from the fact that Rexco, unlike REA, does not own any equipment. Furthermore, aside from four owner-operators who were on long-term leases,[33/] Rexco has never employed any regular drivers. Instead, the owner-operators drive exclusively pursuant to trip leases and back-to-back trip leases.[34/] As a result the Rexco sales agents seldom knew when to expect a driver and were, therefore, continuously recruiting drivers from local truck stops. Furthermore, the testimony of the Rexco sales agents repudiates any suggestion that they had any control of the drivers after they left the origin point.[35/] As a result, there was absolutely no way that they could guarantee that a delivery would be expeditiously accomplished. Instead, it was left to the driver to decide at what pace he intended to move.[36/] If the driver chose to stop at his home before making the delivery, there was nothing to prevent it.[37/]

33/ During the initial discovery Complainants' attorneys were advised by REA officials that only four long-term leases were ever in existence. They apparently terminated when REA was adjudicated a bankrupt.

34/ Complainants' argument concerning the alleged illegality of this arrangement is found infra, pp. 46-54.

35/ See Tr., pp. 120, 167-168, 286, 351-352, 531 and 1656-1657.

36/ For example, the shipments set forth in Appendix A, Exhibit 19, Nos. 2, 8 and 17 involve movements between Laredo, Texas, and Omaha, Nebraska, a distance of 1,067 miles. Nevertheless, the transit time for No. 2 was 104 hours, while only 36 hours for No. 8. Finally, transit time for No. 17 was 84-1/2 hours.

37/ See Tr., pp. 2246, 2249 and 2046.

The situation is further aggravated by the fact that Rexco has no central dispatch unit with which it can keep track of its drivers. As a result, Rexco's General Manager was forced to divulge to the Commission's investigator that a team of drivers went off duty for 30 days and that he was unaware of the problem until someone notified him of it.[38/] In addition, the Commission's investigator testified that he had been told by Mr. Williams, Rexco's General Manager, that it was not Rexco's general policy to substitute equipment in case of a breakdown. To illustrate this point further, it has been testified that even though a driver broke down in Philadelphia, which is Rexco's home office, and his equipment was out of service for three days, there was no substitution of equipment.[39/] All of these facts lead to the irrebuttable conclusion that Rexco's service utterly fails to satisfy either the "firmly established schedule" or "expeditious service" requirements.

Second, Rexco also fails to satisfy the related criterion that the carrier must perform actual operations between all authorized points.[40/] In the first place, Rexco has not attempted to provide actual operations between all of

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38/ See Tr., p. 2130.

39/ See Exhibit 19, Appendix A, Shipment No. 11; and Tr., pp. 2136-2137.

40/ By publishing a 300 mile minimum for the imposition of rates, Rexco has in effect embargoed shipments moving less than that distance.

REA's authorized points. Instead, it has abandoned all service at most of REA's authorized points and instead has concentrated its efforts on shippers which generate truckload traffic. Thus, while Rexco will pick up for a shipper at any given point that has a truckload shipment, it will not provide service to a small shipments shipper next door. Second, because of the call-on-demand type service being offered, the fact that Rexco may have a truck at a specified point on one day is no guarantee that another one will ever reappear. Furthermore, since Rexco admittedly does not operate any terminals[41/] or similar facilities, or own any equipment, it is simply not in a position to guarantee that any service will be provided at any given point.

On the other hand, Rexco has illegally refused to limit its service to points that are within REA's authorized territory or within the free pickup and delivery limits established by REA's A-4 terminal area publication. Instead, Rexco has operated in such a manner as to leave no doubt as to its intention to disregard the fact that the REA operating authority is limited to the specified points contained in its certificates, temporary authorities and A-4 terminal area publication. As the unchallenged testimony of the various Rexco sales agents will show, they were led to believe that Rexco could serve all points located east of a line drawn

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41/ See Exhibit 7, Answers to Interrogatories Submitted on Behalf of Rexco, Inc. and REA Express, Inc., dated March 17, 1976, at p. 3.

through Denver.[42/] As Mr. Roy H. Stewart testified (Tr., p. 292):

> I asked for a copy of their operating [authority], they said it is this high (indicating [two feet]), can't give it to you, just take our word for it, we can go anywhere, commodities in the United States east of this line.

As a result Rexco handled by itself various shipments as set forth in Exhibit 20 to points that Complainants contend are not included either within REA's authorities or within the scope of REA's terminal area publication, including specifically Fenwick, West Virginia; Stephens City, Virginia; Elverson, Pennsylvania; Trumbauersville, Pennsylvania; Huguenot, New York; and New London, Texas.[43/] Lest Complainants be accused of failing to prove a negative, the Commission should take official notice of REA's published Waybill Guide which is on file with the Commission. In that Guide, which was in effect at all times during the Rexco operations, New London, Texas; Huguenot,

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42/ As various sales agents have testified, Mr. Williams, the Rexco General Manager, when asked about Rexco authority would simply provide them a map of the United States with a line drawn through Denver. A copy of the map given to Mr. Roy H. Stewart is attached to his Prepared Statement. See Exhibit 1, Appendix 8, Appendix B. Also see Exhibit 1, Appendices 3 at p. 6, 4 a p. 3, 6 at p. 3, 6 at p. 3, 7 at p. 2 and 8 at p. 2. Also see Tr., pp. 162-163 and 286.

43/ Even though Complainants served interrogatories on Defendants on May 18, 1976, asking Defendants to identify the authority under which these points were served, Defendants to this day have been unable to do so. Complainants must, therefore, point out again that REA's bankruptcy is not a valid excuse for its past failure to set up an index of its authorities or to take some positive steps to require Rexco to identify its authority prior to movement.

New York; and Fenwick, West Virginia, are specifically listed as points at which no service would be provided at REA. It requires shipments to New London to be put "on hand" at Overton, Texas; shipments to Huguenot, New York, to be put "on hand" at Middletown, New York; shipments to Fenwick, West Virginia, to be put "on hand" at Richwood, West Virginia.[44/] It is respectfully submitted that Rexco, as a division of REA Express, Inc., was bound by the terms of the REA tariffs and authorities and, therefore, could not legally provide pickup and delivery service at the above points.[45/]

(d) Rexco has not confined its operations to those over "regular routes."

The evidence of record demonstrates that Rexco deliberately has made no attempt to confine its operations to the regular routes authorized by the Commission. Instead, its drivers are left to take whatever route they desire. Thus, the

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44/ Copies of the pertinent pages are attached to this Brief as Appendix B for the Commission's convenience. The term "on hand" refers to the former REA practice whereby if a shipment were received destined to a point outside REA's published terminal area, it would be forwarded to an REA terminal near to the destination point where it would be "placed on hand." A card would then be sent to the consignee who would either pick up a shipment himself or arrange for somebody else to pick it up. REA, however, would not make the delivery. See Tr., pp. 1285-1302 and 2417. In particular, see pp. 1293, 1297, 1300 and 2417. As the above examples prove, Rexco has not so limited its operations and has, thereby, engaged in unlawful, unauthorized operations in violation of its governing tariff publications.

45/ Complainants respectfully submit that Rexco, by providing free pickup and delivery to shippers or receivers located at these points, failed strictly to observe its A-4 tariff which establishes REA's pickup and delivery limits. This would, of course, be in violation of the Elkins Act, 49 U.S.C. §(1).

Rexco operations violate not only the Commission's orders denying REA the right to conduct irregular route operations, but also the terms of every certificate and temporary authority held by REA.[46/]

That Rexco conducts irregular route operations is proved by several factors, including the fact that the trip leases do not set out the routes to be followed. While the trip leases reflect several different entries on the space designated "via route _____," including "irregular," "Rexco," "Rexco Routes," "Direct," "Rexco Direct" and "Regular Routes," or is simply left blank, entries other than "irregular" are obvious shams.[47/] Initially, it should be observed that the sales agents were never given any instructions from Rexco concerning the routing of traffic, nor were they provided a copy of REA's authorities.[48/] As a result it

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46/ The fact that every authority held by REA sets out in simple English the exact routes that REA, or Rexco, may legally traverse has been deliberately ignored by the Trustee and Rexco. Thus, REA does not, as claimed at page 19 of the "Trustee's Answers to Interrogatories dated August 16, 1976," have prima facie authority to operate over Interstate 80 between Youngstown, Ohio, and Milton, Pennsylvania. Nor does the fact that REA can serve both points carry with it the ability to operate between such points as suggested by the Trustee, id., at page 9. Finally, while the Trustee may consider the portion of Interstate 80 involved herein as only a short segment of that highway, it should be noted that this segment, over which REA is not authorized to operate, is the principal route traversed by the Rexco drivers on movements between the East Coast and the Midwest.

47/ See Exhibit 1, Appendix 9.

48/ See Exhibit 1, Appendices 3 at p. 7, 4 at p. 3, 5 at p. 3, 6 at p. 3, 7 at p. 2, 8 at p. 2 and 29 at p. 4.

has been testified that drivers were given complete discretion to take the "shortest and best" or "most direct" routes, or simply to use the Interstate Highway System.[49/] In short, if a driver happened to follow an authorized route, it was pure coincidence.

The net result of this total lack of control over routing has been that the uninformed drivers have repeatedly operated over highways over which REA lacked appropriate authority. Thus, a large percentage of the Rexco movements that cross Pennsylvania traverse Interstate Highway 80 between Youngstown, Ohio, and Milton, Pennsylvania,[50/] even though a review of REA's certificates and temporary authorities, including the hub authority, will demonstrate that REA lacks authority to traverse this highway. Although Rexco attempted in its "Answer to Interrogatories of May 19, 1976" to claim that the hub authority contained its over-the-road authority, such is not the case. As a review of REA's application in 2308 TA will reveal, at the time the hub application was filed, Interstate 80 did not exist between Milton, Pennsylvania, and Youngstown, Ohio, and was, therefore, not included as a route.[51/]

49/ See Exhibit 1, Appendices 3 at p. 7, 4 at p. 8, 5 at p. 4, 6 at p. 3, 7 at p. 2 and 8 at p. 3. Also see Tr., pp. 126, 217, 331, 351, 399-400 and 1656.

50/ See Exhibit 18, Appendix A, Shipments 20, 28 and 33.

51/ As of this date REA has not been able to provide Complainants with the authority which permits it to traverse these routes. In addition, Respondent has not identified either the authority which permits it to transport shipments destined to El Paso
(footnote cont'd on following page)

For a more complete discussion of Rexco's movements which Complainants contend are over unauthorized routes, the Commission's attention is directed to Exhibit 18. Needless to say, Complainants do not claim that Exhibit 18 contains all such illegal movements performed by Rexco. However, since as has already been shown, supra, at p. 36, Rexco never instructed its drivers to follow any specific routes, it can be safely asserted that a substantial percentage of its moves have been conducted illegally.

Finally, it is respectfully submitted that the burden of proof on this issue rests with the Respondent. Since its operations are being conducted in a regulated industry, there is an affirmative obligation on it to know its operating authority and to limit its operations accordingly. Nor is the fact that REA is in bankruptcy an excuse for its failure to devise an appropriate index of its authorities. Since REA's last authority was obtained several years prior to entry into bankruptcy, it certainly cannot be heard to contend that its lack of funds contributed to its inability to devise an appropriate routing guide or similar index.

51/ (footnote cont'd from p. 36)
Texas, over Interstate Highways 20 and 10, and U.S. Highway 80, running from Sweetwater, Texas, to El Paso, Texas, or its authority to operate over Interstate Highway 80N between Ontario, Oregon, and Pendleton, Oregon; and between Boardman, Oregon, and the Dalles, Oregon. For examples of movements between these points, see Exhibit 18, Appendix A, Shipments 26 and 27.

(e) The Rexco rates are not premium.

As previously noted, "carriers providing express service should not establish the same or substantially the same rates as carriers of general freight," but should instead charge premium rates that reflect "the higher type of service expected of, and supplied by them." Despite this requirement, Rexco has established a rate level that is far from premium and indeed is open to serious question as to whether it is compensatory and reasonable.

As the rate comparisons introduced by the witnesses for Brada Miller Freight System, Inc. and George Transfer and Rigging Company, Incorporated will show, the rates published by Rexco are in some instances only 62 percent of their established rates.[52/] For example, as Attachments 8, 9 and 10 (Exhibit 1, Appendix 15) will show, Rexco's existing rates for shipments of auto parts, iron and steel, chemicals and building materials moving 300 miles are as follows:[53/]

Auto Parts	36,000	.70
	40,000	.64
Iron & Steel	24,000	1.06
	32,000	.79
	40,000	.64

52/ It is well settled that one of the best tests of the reasonableness of a rate is a comparison of the assailed rate with the other rates in effect on like traffic moving in the same general territory. See Scott Paper Co. v. United States, 372 F. Supp. 721 (E.D. Pa. 1974), aff'd. on appeal, 419 U.S. 807 (1974).

53/ The 300 miles distance is the shortest distance for which Rexco has existing rates. All appropriate tariff citations are referenced in the cited attachments and appendices.

Chemicals	36,000	.70
	40,000	.64
Building Materials	30,000	1.58
	36,000	1.05
	40,000	.94

Brada Miller's, by way of contrast, are as follows:

Auto Parts	24,000	1.24
	30,000	1.13
	40,000	1.03
Iron & Steel	24,000	1.07
	40,000	.74
Chemicals	35,000	1.03
	40,000	.97
Building Materials	28,000	1.75
	42,000	1.56

The Rexco rates are also substantially below those maintained by George Transfer. As reflected at pages 5 and 6 of Appendix 16, the mileage rates on specific comparisons are as follows:

IRON & STEEL ARTICLES (Minimum Weight 40,000 Pounds)

Miles	Rexco	George Transfer
300	64	89
400	83	107
500	1.02	136

MACHINERY

Miles	Rexco 40,000 pounds	George Transfer 36,000 pounds
300	64	109
400	83	126
500	1.02	148

ALUMINUM (Minimum Weight 40,000 pounds)

Miles	Rexco	George Transfer
300	64	80
400	83	94
500	1.02	1.08

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BUILDING MATERIALS (Minimum Weight 40,000 Pounds)

Miles	Rexco	George Transfer
300	64	77
400	83	96
500	1.02	1.16

It is anticipated that Rexco will attempt to argue that its rates are not too low and that the existing rates of competing carriers are too high. While this argument might be entitled to a certain amount of credibility if the comparisons were between two ordinary freight carriers, it must be remembered that the above comparisons are between the rates of an alleged "express" carrier and those of competing non-express carriers. When the express carriers' rates are substantially below the ordinary carriers', those rates cannot be said to be premium rates.

Furthermore, it is doubtful that the Rexco rates are even compensatory.[54/] If an analysis of the rates in Rexco's item 1500, column 1, is made, it will reveal that these rates produce gross earnings of approximately 85 cents per laden mile at 300 miles and deteriorate to approximately 66 cents per mile at 3,000 miles. Assuming that the owner-operator is paid 75 percent of the revenue, the resultant earnings to the owner-operator will be approximately 63-64

54/ The issue of whether the Rexco rates are compensatory was specifically raised in the Complaint filed by Schneider Transport, Inc., There it was alleged at page 3 that the Rexco rates "are unreasonable and noncompensatory in nature and constitute an unfair and destructive competitive practice."

cents per laden mile at 300 miles to approximately 49-50 cents at 3,000 miles.

When these figures are compared with the regional average costs as set forth in the Commission's Release No. 177-76, containing the up-date ratios for determining motor carrier costs for 1975, the noncompensatory level of the Rexco scale of rates is clearly demonstrated. For example, the regional average line-haul cost per vehicle mile for the Middle Atlantic for 1975 was 66.049 cents. Thus, a Rexco driver would not, using regional average figures, recover his costs, assuming he would generate 63-64 cents per laden mile as his share of the revenues.[55/] While admittedly these regional average costs do not necessarily reflect Rexco's actual costs, this data does provide, as has been repeatedly recognized by the Commission, a valid basis of comparison. It may not be ignored in the absence of effective rebuttal by Respondent. See, e.g., All Freight Between Points In Ohio, 318 I.C.C. 731, 735 (1963). No attempt was made by Rexco to introduce any evidence to rebut the Commission's data and to show that its rates are compensatory. Having thus failed to carry its burden, the Respondent cannot now argue that its rate is either compensatory or the proper measure of reasonableness.

55/ The fact that the owner-operator is not recovering his costs is a sufficient basis for condemning the rate as noncompensatory. See Eastern Central Motor Carriers Ass'n. v. United States, 239 F. Supp. 591, 600 (D.D.C. 1965).

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While it is acknowledged that REA has been permitted in recent years, through the publication of aggregate, unit and volume rates, to escape a rigid insistence that all its rates be premium, the Commission itself has observed that such exceptional rates have not basically altered the average weight of REA's shipments or the basic scope of its service. As the Commission noted in Express Company Terminal Areas, 332 I.C.C. 91, 101 (1967), sustained on review sub nom; Northern Freight Lines, Inc. v. United States, 304 F. Supp. 536 (N.D. Ga. 1969), aff'd. per curiam, REA's average weight per shipment only increased from 45 to 51 pounds as a result of these new rates. This slight increase in average weight stemmed from the fact that REA continued to satisfy the remaining express criteria. Thus, the self-defining aspect of the Commission's interpretation of express service worked to keep REA within the parameters of express service.

The Rexco operation, on the other hand, has not maintained this balanced equilibrium between small and large shipments. Instead, by refusing to handle predominately small shipments at premium rates, Rexco has completely obliterated any basis for permitting some less-than-premium rates on large shipments as an exception to the premium rate requirement. In effect, REA has undergone a complete metamorphasis from a premium rate structure for a unique service for small shipments to a sub standard rate structure for truckload shipments. Now its sales agents use the cheap rates

charged by Rexco as a selling point for what can only be considered an ordinary freight operation.[56/] While Rexco may attempt to justify this by claiming it is merely satisfying the desires of the marketplace for cheap transportation, it should be remembered that the REA certificates were granted on a nationwide basis on the understanding that a unique service for small shipments would be rendered for which premium rates would be charged. The Rexco operation is clearly not the "express" service authorized by the Commission.

Finally, as has been argued by Complainants throughout this proceeding, the Rexco rate level has resulted in the unlawful diversion of substantial amounts of traffic from Complainants.[57/] Since, as testified herein, the reduction of a rate by as little as 2 percent will cause a shift in traffic, it goes without saying that Rexco's 35 percent reductions have caused substantial amounts of traffic to be unlawfully diverted from Complainants.[58/]

Furthermore, it should be observed that Rexco was not able to divert this traffic because it offered a superior service or because its service was dependable or expedited. Instead, Rexco was able to divert traffic solely because the shippers were willing to await equipment in order to take

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56/ See Exhibit 1, Appendices 3 at p. 2, 4 at p. 2, 5 at p. 2, 6 at p. 2 and 8 at p. 2.

57/ See Appendices 13, 15, 16, 17, 26, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45 and 46 to Exhibit 1.

58/ See Tr., pp. 1225-1226.

advantage of Rexco's cheap rates. While it is recognized that a lower competitive rate may be justified by peculiar circumstances and the existing rate structure should not be regarded as sacrosanct, the desire for lower rates must be counterbalanced against the need for economic viability of the trucking industry. The National Transportation Policy requires no less. The Rexco operation has taken a great economic toll from the industry.

While the Trustee has identified the Rexco operations as being "the only operations of the Bankrupt which are economically feasible for the Trustee in Bankruptcy,"[59/] this does not make such operations in the public interest. The Rexco operations do not entail any terminal expenses or other expenses connected with the ownership of equipment. Thus, its overhead expenses consist of only a part of the administrative costs borne by most carriers. What the Trustee fails to indicate is that the burden of providing the service falls entirely on the owner-operators who supply the equipment on a trip lease basis and, thereby, foot much of the transportation expenses for Rexco. In this respect, the observations of the Supreme Court in American Trucking Associations, Inc. v. United States, supra, 344 U.S. at 306, should be heeded, especially its conclusion that:

59/ See "Trustee's Answers to Extent Possible as of August 16, 1976, to Complainants' Interrogatories Nos. I Through V," dated August 16, 1976.

> Use of exempt equipment by authorized carriers also tends to obstruct normal rate regulation. Schedules are traditionally grounded in costs. But the cost picture of a carrier who depends largely on leased equipment is far different from that of a carrier owning his own trucks. Not only is the former able to undertake operations with relatively slight investment. As well, his current overhead involved in operating leased equipment is solely administrative, the owner of the exempt equipment bearing the expense of gas, oil, tires wages and depreciation out of his share or the fee. And to refer to the exempt owner's own expenses as determinative of what is a 'reasonable' rate would be manifestly impossible as long as the relationships between lessor and lessee are too tenous, short-termed and informal and the compensation of each based on a division of revenue.

While Rexco operations are economically feasible for the Trustee, it must be remembered that the industry is being required to meet the Rexco rates or forego the traffic. In other words, Rexco is using the owner-operators who are willing to work for an extremely depressed wage to gain an unfair and destructive competitive advantage over the rest of the industry.[60/] While in the short run this may not prove disastrous to competing certificated carriers, as they are forced to lower their rates in order to compete with the Rexco rates a serious problem will develop. Owner-operators working for such carriers will find their earnings being dissipated as they are forced to accept a percentage of substantially lower freight charges.

60/ This very practice was condemned as an unfair competitive practice by the three-judge District Court in Eastern Central Motor Carriers Ass'n. v. United States, supra, 239 F. Supp. at 601.

Since their costs are unlikely to drop, it can be readily anticipated that the truck strike of 1973 and 1974 will be repeated as owner-operators generally are forced by sheer economic necessity to take their rigs off the nation's highways. In short, while the Rexco operations may be beneficial to the Trustee, they are opposed to a sound national transportation system and should, therefore, be halted immediately.

3. The Rexco Operations Are Not in Conformity with the Commission's Leasing Regulations

Complainants further have shown that Rexco's operations are dependent on the exclusive use of owner-operators on a trip-lease basis in violation of the Commission's rules governing the leasing of equipment. These rules, as set forth at Part 1057 - Lease and Interchange of Vehicles, 49 C.F.R. §1057.1, et seq., contain the guidelines under which a carrier may legally augment its equipment. At the heart of these rules are the requirements that any lease of equipment shall be in writing and shall be of a minimum duration of 30 days, except in three specific instances involving (1) equipment used in agricultural or perishable operations; (2) automobile and tank truck carriers; and (3) dump equipment used for ice and snow control purposes. See §1057.4. In addition, as set forth at §1057.3, there are two other exemptions that require attention. First is the exemption provided equipment used in the direction of a point which lessor is authorized to serve, and second is the exemption for equipment used in the

transportation of railway express traffic. The Rexco operations involving "back-to-back" trip leases fail to satisfy these regulations.

At the oral hearing, the parties stipulated to four appendices. These appendices show that Rexco entered into a series of consecutive trip leases with owner-operators whereby the equipment would be driven, using Appendix 19 as an example, from Omaha, Nebraska, to Laredo, Texas, where the driver, after delivering the first Rexco shipment, would then pick up another Rexco shipment and return to Omaha. As the logs and trip leases attached to Appendix 19 reveal, Larry Ball, the driver, drove the same piece of equipment owned by Campbell Trucking Co. of St. Joseph, Missouri, in consecutive movements, using trip leases, backwards and forwards from November 10, 1975, to December 30, 1975.[61/] As the leases attached to Appendix 19 further reveal, their duration was not for a period of 30 days. Nor do the leases show Campbell Trucking Co. to be an agricultural cooperative. Furthermore, since the movements necessarily on one leg of the trip or the other were away from the general area in which the motor vehicle is based, Rexco would not fit within the exemption provided by §1057.4. In addition, there is nothing of record to indicate the Campbell Trucking Co. is authorized to engage in the transportation of property as a common or contract carrier under the provisions

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61/ On the final movement, which was picked up at Laredo, Texas, on December 10, 1975, delivery was not completed for 20 days.

of Sections 206, 207 or 209 of the Interstate Commerce Act.[62] Therefore, Rexco cannot fall within the exemption provided by §1057.3(a). Also, since Rexco had continuous possession of the equipment for a month and a half, it would be impossible for Campbell, even if an authorized carrier, to claim it was regularly using the equipment in its authorized service. In any case, it is Complainants' position that Rexco had the burden of proving that it could claim entitlement to this exemption. However, as a review of the record will show, Rexco made absolutely no attempt to do so.

As expected,[63] however, Rexco did attempt to claim entitlement to the exemption provided equipment utilized in the transportation of railway express traffic by 49 C.F.R. §1057.3(b).[64] Complainants respectfully submit that the exemption does not, and cannot, apply to the Rexco operations.

The exemption reads, as herein pertinent, as follows:

> §1057.3 Exemptions.
>
> The provisions of §1057.4, except paragraphs (c) and (d), relative to inspection and identification of equipment, shall not apply:

62/ See 49 C.F.R. §1057.2(a).

63/ See Complainants' Argument and Evidence in Exhibit 1, at p. 44.

64/ See Tr., pp. 321-324.

> (b) Rail or express vehicles. To equipment utilized wholly or in part in the transportation of railway express traffic, or in substituted motor-for-rail transportation of railroad freight moving between points that are railroad stations on railroad billing.

It should be clear that the latter portion of the regulation cannot apply since the Rexco operations are not substituted motor-for-rail transportation. Thus, attention need only be paid to the phrase "transportation of railway express traffic."

In the first place, the phrase "railway express traffic" is not synonymous with "Railway Express Agency." This conclusion follows from a comparison of Section 1057.3(b) with Section 1131.5(b) of 49 C.F.R. where the Commission explicitly states that "[e]ach application for emergency temporary authority for 30 days or less, except those involving the Railway Express Agency or substitution of motor for rail service . . ." As this shows, the Commission has seen fit to differentiate between situations involving the Express Agency and railway express traffic. Thus, the trip lease exemption applies to specified railway express traffic, and not simply to REA. Hence, unless Rexco is transporting railway express traffic, the exemption of §1057.3(b) does not apply to it.

Second, it is Complainants' position that Rexco is not participating in the transportation of "railway express traffic" as that term is used in §1057.3(b). This exemption first appeared in Appendix E to the Commission's Report in

Lease and Interchange of Vehicles By Motor Carriers, 52 M.C.C. 675, 743-744 (1951), and was meant to satisfy certain objections raised by the railroads and the Railway Express Agency, Inc. concerning possible adverse effects that the Commission's order and proposed rules might have on the operations of the Agency. Thus, three classes of its operations were claimed by Railway Express to require an exemption from the proposed rules:[65/]

> (1) Operations pursuant to arrangements under which the Express Agency furnishes motor vehicles and drivers to railroads holding operating authority from the Interstate Commerce Commission in the transportation of less-carload freight in substituted motor service.
>
> (2) Operations pursuant to arrangements under which express traffic is transported by Star Route Mail Carriers who furnish the motor vehicle and drive the same.
>
> (3) Operations conducted under arrangements between the parent Delaware company and its wholly-owned subsidiaries, Railway Express Motor Transport, Incorporated, in the State of Indiana, Railway Express Agency, Incorporated, of California, in the State of California, and Railway Express Agency, Incorporated, of Virginia, in the State of Virginia.

In addition, Mr. Gross, the witness for the Railway Express Agency particularly objected (Tr., pp. 1739-1740) to the proposed Rule 2f (presently §1057.4(f)) requiring the

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65/ See Docket No. MC-43, Tr., pp. 11730-11731. Also see "Brief In Behalf Of Railway Express Agency, Incorporated" filed May 16, 1949, in Docket No. MC-43. A certified copy of the transcript of the testimony of Paul Gross, Jr., who appeared for the Railway Express Agency, is attached to Exhibit 1 as Appendix 22. A certified copy of the above referenced Brief is attached to Exhibit 1 as Appendix 23.

authorized carrier to prepare and preserve for two years a truck or load manifest containing certain information. As he testified:

> Rule 2f which requires the authorized carrier to prepare and preserve for two years a truck or load manifest containing certain information which would be impracticable and unnecessary insofar as the arrangements between the parent company and its subsidiaries are concerned. The express traffic transported on the trucks of a subsidiary consist of a large number of relatively small packages. At the present time a manifest is not required or utilized and it would serve no useful purpose as between the parent and subsidiary companies. A record known as a delivery sheet is affixed to each express shipment and accompanies it to destination; it is not detached from the shipment until arrival at destination. The general character of the express traffic is such that it would be impossible to make any record of the commodities or class of merchandise transported. In some instances the express shipments are not weighed until they arrive at destination, thereby making impossible compliance with that part of the proposed rule which would require the showing in the manifest the weight of the commodity transported. This rule was undoubtedly proposed with regard to the handling of truckload shipments and was not intended to apply to, nor could it practically be made applicable to, the handling of a large number of diversified express shipments such as are handled by the Express Agency and its subsidiaries. What has been said concerning the preparation of manifests in connection with the traffic handled by the subsidiaries applies equally to the handling of l.c.l. freight traffic for the railroads.

The above clearly indicates that the Commission, in promulgating the exemption was responding to certain identified operations being conducted by REA's railroad-owned predecessor.

Had it done otherwise, the Commission would have used the approach reflected in the emergency temporary authority section previously cited and simply exempted REA from the rules. Since the Commission did not take this broad step, but instead limited the thrust of the exemption only to "equipment utilized wholly or in part in the transportation of railway express traffic," it cannot be used to exempt operations that bear no resemblance to any of the operations claimed by REA's rail-operated predecessor in the Ex Parte MC-43 proceeding to require exemption.

What has been shown with respect to the Rexco operation unquestionably rebuts any suggestion that it is utilizing equipment, in whole or in part, in the transportation of railway express traffic. The Rexco operations would, therefore, not fall within the type of operation which the Commission sought to exempt. Furthermore, since Mr. Williams in an affidavit presented to the Commission has specifically stated that Rexco will be operated independently of the parent company and will not provide the services traditionally associated with the transportation of railway express traffic, it is respectfully submitted that Rexco cannot claim the protection of the exemption provided equipment utilized in the transportation of railway express traffic.[66/] Therefore, movements such as those outlined in Appendices 18, 19, 20 and 21 are in violation of the Commission's leasing regulations and hence are unlawful.

66/ Exhibit 1, Appendix 2, at p. 4.

The Rexco operations are in serious violation of the leasing regulations in yet another respect. Regulation 49 C.F.R. §1057.4(c) states that:

> [i]t shall be the duty of the authorized carrier, before taking possession of equipment, to inspect the same or to have the same inspected by a person who is competent and qualified to make such inspection and has been duly authorized by such carrier to make such inspection as a representative of the carrier, in order to insure that the said equipment complies with the Motor Carrier Safety Regulations of the Federal Highway Administration of the Department of Transportation.

At the oral hearing it was discovered that Rexco for over nine months permitted Mrs. Mary Ann Campbell, an employee of its sales agent at Portage, Indiana, to sign the equipment inspection report even though she was unqualified to make such inspection. Furthermore, as she admitted in response to a question by Judge Beddow, Tr., p. 239, "I signed the inspections, but I did not perform them." She also admitted while answering the question of "who did" the inspections, that "no one" had done them. She further testified at page 276 that her superior was aware that no inspections were being made. Finally, on cross-examination she testified that she had mentioned to her employer "a time or two that there should be someone set up to do it, but it wasn't done."

4. The Rexco Operations Are in Violation of the Rules of Safety of the Department of Transportation

In the course of discovery, Complainants made copies of numerous manifest packets which originally were to be used only to determine the routes Rexco was traversing, the type of traffic it was transporting and whether Rexco was engaging in back-to-back trip leasing. However, when Complainants' counsel reviewed the drivers' logs in these packets, an alarming number of hours of service violations appeared to be involved. In addition, it appeared that there had been serious falsifications of drivers' logs, and significant disparities between the points and dates shown on the drivers' logs and the points and dates shown on various fuel receipts. Also, as Complainants have shown, some drivers engaged in the illegal practice of keeping two log books in order to appear to be within their permitted driving time. In other words, had the driver kept accurate logs in only one book, he would be required to cease driving. However, by keeping two sets of logs, the figures could be juggled at his convenience with little fear that the logs would ever be compared.[67/] For example, one Rexco driver, Mr. Mitchell, submitted various logs which show that on November 5, 1975, Mitchell unloaded a shipment (Manifest No. 378) in Marseilles, Illinois, and

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67/ It was only when Complainants prepared their appendices concerning back-to-back trip leases that this practice came to light. Rexco either never discovered this was happening or else did nothing to attempt to halt it.

loaded another shipment destined to Cleveland, Ohio (Manifest No. 1310). The logs submitted (see Exhibit 1, Appendix 21, at p. 22) show him driving from 4:00 a.m. to 6:30 a.m. and then not driving again until 3:30 p.m. on November 6, 1975. This log appears to cover Manifest Nos. 3132 and 1310. The next log (id., at p. 23) shows only Manifest No. 3132 involving a movement from Kent, Ohio, to Edison, New Jersey, on November 7, 1975.

However, Mr. Mitchell also submitted a separate log with Manifest No. 1310 (id., at p. 24), which shows him driving from midnight to 2:00 a.m., from 7:30 a.m. to 8:00 a.m. and from 8:30 a.m. to 10:30 a.m. on November 6, 1975. This, of course, differs significantly from the previous log shown above.

Finally, as shown (id., at p. 25), Mitchell submitted another log with Manifest No. 3132. This shows him on November 6, 1975,[68/] to have no driving time until 11:00 a.m. Thereafter, he drove to 4:00 p.m. and again from 5:00 p.m. to 9:30 p.m. In short, this log also differs significantly from both of the other logs shown above.

In order to fully analyze these violations, Complainants requested the expert assistance of Mr. William Johns, Director of the American Trucking Associations, Inc., Safety Department. Complainants submit that Mr. Johns' analysis illustrates the seriousness of these violations. Little imagination need be

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68/ Although the logs read 12/6/75, that date is in error. All other records contained in Manifest No. 3132, including the driver's certification of service which is reproduced at Exhibit 1, Appendix 21, at p. 26, reflect the date of November 6, 1975.

exercised to see the great potential for harm that these drivers present to the traveling public.

We would like once again to emphasize that the examples illustrated by Mr. Johns are from only a small sampling of Rexco manifest packets. We believe that Rexco drivers routinely submit logs that do not truthfully reflect their actual hours of service. In addition, it appears that while Rexco management is totally cognizant of these continued violations, it has taken no firm steps to bring them to a stop.[69/] Moreover, Mr. Stewart testified that a driver with too many hours was instructed by Philadelphia to move a load despite the fact that he was already on duty in excess of his legal time. See Tr., pp. 310-311. Furthermore, Rexco has sent memoranda to drivers requesting them to correct their logs to remove violations and resubmit them. As Mr. Johns has testified, Tr., pp. 1541, 1546, 1550-1551, demanding drivers change their logs to reflect specific hours, etc., after they have previously been submitted as true and accurate, is, in effect, requiring drivers to falsify the logs.

The U.S. Department of Transportation, Bureau of Motor Carrier Safety, has prescribed hours of service regulations

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69/ Even if it is assumed that Rexco was not cognizant of these problems prior to Complainants' discovery, the fact that they did occur is indicative of the lack of control exercised by Rexco over its operations. Furthermore, Complainants contend that the exclusive use of trip leases makes it virtually impossible to stop such activities since the various sales agents are entirely at the mercy of a driver who may not desire to conform to the regulations. In other words, Rexco's operations encourage this type of violation.

for drivers of commercial vehicles (49 C.F.R. §395). These regulations not only set out the maximum hours that an individual may drive, but also provide for mandatory compliance by drivers and motor carriers alike. Section 395.8(h) demands that the driver shall certify to the correctness of the log by signing his signature on the log in the space provided. Similarly, §395.8(c) provides that only the drivers may make entries on the logs. The regulations make it very clear that nothing less than a fully accurate log is acceptable.

Section 395.8(a) provides, inter alia, that the falsification of drivers' logs shall make both the driver and the carrier liable for prosecution. Therefore, if a driver indicated on his logs that he was in a particular place at a particular time, and in actuality was not, he would have violated the truthfulness requirement of the regulations. A failure on the part of the carrier to require drivers to fill out accurate logs also constitutes a willful violation by the carrier and subjects the carrier to criminal prosecution. U.S. v. Matlack, 149 F. Supp. 814 (1957); U.S. v. Sawyer Transport, Inc., 337 F. Supp. 29 (1971), aff'd. per curiam, 463 F. 2d 175 (1972).

We believe that these hours of service violations are but another result of the lack of control Rexco exercises over its operations. Indeed, a threat to terminate the driver is rather hollow because all of its drivers are only employed on a one-trip basis.

We recognize that the Commission is without jurisdiction to prosecute these hours of service violations. However, it is respectfully submitted that the Commission may properly consider these violations and the other violations of the Department of Transportation's safety regulations to be a positive indication of REA's unfitness to hold and operate motor carrier authority.[70/] "If a carrier is not in substantial compliance with applicable safety regulations, it is axiomatic that such carrier is a threat to the public and proper exercise of this Commission's regulatory powers requires that we take steps necessary to protect the public." Midwest Coast Transport, Inc., Ext. -- Duluth, Minn., 105 M.C.C. at 732 (1967), findings modified on further consideration, 106 M.C.C. 380 (1968).

Complainants would like to emphasize that all of these movements were discovered upon a review of a very small sampling of Rexco manifest packets. Because so many serious violations appeared in such a small sampling, it is strongly suggested that those violations are not mere aberrations, but rather that this entire situation is necessarily the natural result of the Rexco method of operation. In other words, these violations are made possible, and even encouraged, by management's complete lack of control over its agents and drivers. Where agents are not informed of the extent of their principal's operating

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70/ See the Commission's notice published in the Federal Register, Vol. 41, No. 194 - Tuesday, October 5, 1976, pp. 43904-43905, outlining the Commission's fitness standards in temporary authority application.

authorities, but rather are told to solicit all traffic and move it any way they can, such violations occur.

5. The Rexco Operations Are Not in Compliance with Its Tariff and Governing Publications.

It is Complainants' further position that Rexco has violated the terms of its tariff publications. In addition to those instances noted, supra, pp. 30-31, where Rexco, contrary to the terms of the "Joint Directory of Pick-Up and Delivery Limits at Express Offices, I.C.C. No. A-4," has provided free pickup and delivery beyond its published limits, Complainants have found other instances where the Rexco operation is violative of its tariff and governing publications.[71/]

71/ The governing publications are found at page 3, item 10, of the Rexco Tariff 85, I.C.C. No. 153, Exhibit 1, Appendix 12:

> This tariff, or as amended, is governed, except as otherwise provided herein, by the following publications and by supplements thereto or reissues thereof:
> (a) Official Express Classification 36, I.C.C. No. 8200 (Railway Express Agency, Incorporated, Series) (Note A)
> (b) Joint Directory of Express Offices, I.C.C. No. A-3 (Railway Express Agency, Incorporated, Series);
> (c) Joint Directory of Pick-up and Delivery Limits at Express Offices, I.C.C. No. A-4 (Railway Express Agency, Incorporated, Series);
> (d) Household Goods Mileage Guide 10, MF ICC 169 issued by Household Goods Carriers' Bureau, Agent (Note B).
> (e) Explosives and Dangerous Articles Tariff 111-A, ICC-ATA 111-A, issued by American Trucking Associations, Inc., Agent.

(footnote cont'd. on page 57)

First, item 190(h) of the Rexco tariff provides that stopping in transit for partial loading and/or unloading will not be permitted on shipments where moving charges are collect. Despite this prohibition, Rexco has transported collect shipments involving stop-offs in transit. As shown on Exhibit 19-A, which was introduced by the Defendants, a stop-off was made in St. Louis, Missouri, for which an additional stop-off charge of $35.00 was assessed by Rexco, even though the movement involved a collect shipment from St. Paul, Minnesota, to Fort Worth, Texas. This is a direct violation of the Defendants' tariff and is likewise a violation of §217(b) of the Interstate Commerce Act, and the Elkins Act which states that the failure of a carrier strictly to observe its published tariffs until changed according to law shall be a misdemeanor. See 49 U.S.C. §41(1).[72/]

71/ (cont'd. from page 56)

NOTE A: When a provision published in the Rules and Regulations conflicts with a similar Rule in the Governing Classification, the provisions of this tariff will apply.

NOTE B: Waiver of Rule 10-C, Tariff Circular No. 19 authorized; ICC Special Permission 75-3693-M; (Rule relief expires with April 17, 1977, unless sooner cancelled, changed or extended.

NOTE C: The provisions of Rule 13 (Rates Based on Released Valuation) will only apply in connection with rates which make specific reference thereto.

72/ In addition, Mr. Bussolatti testified, Tr., p. 2125, that his investigation also found that Rexco had performed operations involving three stop-offs, even though its tariff contains the provision (Item 190) that "[i]n no case shall more than two stops for partial loading or unloading be permitted in transit exclusive of origin and/or final destination.

Another indication of Rexco's failure to comply with the terms of its tariffs and its governing publications is its failure to issue either a Uniform Express Receipt or Uniform Express Bill of Lading for all matter received as required by Rule 2 of the Official Express Classification.[73/] As Mr. Bussolatti has testified (Tr., p. 2234) his review of approximately 6,000 documents did not reveal a single express receipt. Furthermore, his observations are confirmed by Exhibit 19-A which consists of Rexco Manifest No. 5262 and the documents contained therein - which documents do not include either a Uniform Express Bill of Lading or a Uniform Express Receipt.

Furthermore, when the terms and conditions governing the Uniform Express Receipt are consulted, see Exhibit 26, at p. 6, yet another problem is revealed. As set forth a paragraph 6 (which is a restatement of Rule 2 of the Classification):

> When consigned to a place at which the express company has no office, shipments must be marked with the name of the express station at which delivery will be accepted or be marked with forwarding directions if to go beyond the express company's line by a carrier other than the express company. If not so marked shipments will be refused.[74/]

73/ See Exhibits 26, 28 and 29 for Rule 2 as amended. Also see Exhibit 26, at p. 6, for a true copy of the Uniform Express Receipt as published at p. 63 of the Official Express Classification 36.

74/ Footnote on page 59.

There is simply no avoiding the fact that this rule requires all shipments tendered to REA to be handled through an express station. However, as admitted by REA in its "Answers to Interrogatories Submitted on Behalf of Rexco, Inc. and REA Express, Inc." (Exhibit 7) at paragraph VI, "The REXCO Division has not and does not now operate terminals and facilities as such," and at paragraph VII, "The REXCO Division has not and does not now operate any terminals or facilities used for the consolidation of shipments." By failing to operate such terminals and facilities, Rexco is clearly not operating any express stations. Therefore, it cannot be in even partial compliance with the requirements of its own governing classification. Thus, every shipment that Rexco has handled since November 7, 1975, when REA's express stations were shut down, has resulted in an Elkins Act violation.

74/ This rule was amended by Supp. 71 (Exhibit 29) to include instances where shipments in transit were discovered not to be properly marked. As amended, it reads as follows:

> When consigned to a place at which the Express Company has no office, shipments must be marked with the name of the express office at which delivery will be accepted or be marked with forwarding directions if to go beyond the Express Company's line by a carrier other than an Express Company. If such shipments are found in transit not so marked by the shipper, the Express Company will forward the shipment to its office nearest the destination address. A notice will then be sent to both the consignor and consignee from the office where the shipment is being held, requesting instructions as to the disposition of the shipment.

IV.

THE COMMISSION SHOULD IMMEDIATELY REVOKE ALL OUTSTANDING TEMPORARY AUTHORITIES HELD BY REA

In asking the Commission to revoke the approximately 194 temporary authorities held by REA, Complainants rely on several grounds. In the first place, each of the temporary authorities issued to REA contains the explicit condition:

> [T]hat upon the authority herein granted becoming effective, failure of applicant to render reasonably continuous and adequate service to the public pursuant thereto and to maintain compliance with statutory and Commission requirements shall constitute sufficient grounds for suspension, change or revocation of the said authority. 75/

In short, REA was put on notice at the time it was issued its temporary authorities that failure either to render reasonably adequate and continuous service to the public or to abide by statutory and Commission requirements would per se constitute sufficient grounds for the revocation of the temporary authority. As has been shown at length,

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75/ A similar condition is found in REA's permanent authorities:

> [I]t is further ordered and is made a condition of this certificate that the holder thereof should render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure so to do should constitute sufficient grounds for suspension, change, or revocation of this certificate.

supra 20 to 46 , REA has utterly failed to comply with the express condition of its temporary authorities. Not only did REA voluntarily shut down its express operations and liquidate the terminals and equipment used in the provision of express service, thereby rendering itself physically incapable of providing the service authorized by the Commission, but there has been a wanton disregard for and violation of the Commission rules and regulations and those of the Department of Transportation, supra, pp. 43 through 55. REA has failed to exercise the slightest control over the Rexco operations or Rexco over its own operations to insure that they were in compliance with REA's authorities and with the Commission and DOT statutes and regulations. REA, by failing to satisfy the conditions set forth in its temporary authorities, has rendered all of them subject to immediate suspension and revocation by the Commission.

While Complainants admittedly did not spell out this relief in their complaints, it should be remembered that such temporary authorities are not protected by the "notice" requirements of Section 558(c) of the Administrative Procedure Act, 5 U.S.C. §558(c), because they are not "licenses", and, therefore, the Commission can and, on the basis of this record of flagrant violations, should summarily on its own motion, revoke all outstanding temporary authorities.

Complainants' interpretation of Section 558 is supported by the decision of the United States Court of Appeals for the

District of Columbia in Great Lakes Airlines, Inc. v. Civil Aeronautics Board, 294 F.2d 217 (1961), cert. denied, 366 U.S. 965 (1961). In its decision interpreting the reach of Section 558 (formerly Section 9(b) of the Administrative Procedure Act), the Court ruled (id., at 223) as follows:

> Moreover the legislative history of the Administrative Procedure Act makes clear that Section 9(b) was not intended to apply to temporary licenses. Both the Senate [14] and House [15] Reports contain express statements to this effect. And appended to the Senate Report is a letter from the Attorney General to the Chairman of the Senate Judiciary Committee, containing the following commentary on S. 7, the bill that developed into the Administrative Procedure Act: "The second sentence of subsection (b) [of Section 9] is not intended to apply to temporary licenses which may be issued pending the determination of applications for licenses." [16] To the same effect is the Attorney General's Manual on the Administrative Procedure Act, where it is stated (p. 91): "Such permits or licenses may be revoked without 'another chance' and regardless of whether there is willfulness or whether the public health, interest, or safety is involved." So, even if the action of the Board could be construed to be a withdrawal, suspension, revocation or annulment, within the meaning of Section 9(b), these petitioners are not aided. It is beyond question that their licenses were temporary.
>
> 14. S. Rep. No. 752, 79th Cong., 1st Sess. (1945), Administrative Procedure Act, Legislative History 212 (1946) [hereinafter cited Legis. Hist.]

15. H.R. Rep. No. 1980, 79th Cong., 2d Sess. (1946), Legis. Hist. 275.

16. Legis. Hist. 229.

Hence, the Commission may, upon finding that REA is not in compliance with the conditions contained it its temporary authorities, summarily act to revoke them without "another chance," regardless of whether there is willfulness and regardless of whether Complainants initially sought such relief. Indeed, if the Commission were to fail to take this step in light of the flagrant nature of the violations that have been indicated, it would be seriously abdicating its responsibilities under the Act and condoning known unlawful activities and inviting their continuance.

Support for the Commission's revocatory action is found in its recent modification of 49 C.F.R 1131.4 regarding temporary authority applications. In pertinent part the modification reads, "a temporary authority may be revoked should it be determined that the applicant carrier is unfit in accordance with the above guidelines." The guidelines include noncompliance with safety regulations of DOT and Commission rules and regulations.

V.

THE REA HUB TEMPORARY AUTHORITY SHOULD BE CANCELLED AND THE CORRESPONDING PERMANENT AUTHORITY APPLICATION SHOULD BE DISMISSED

On December 1, 1975, the American Trucking Associations, Inc., filed its Petition seeking dismissal of the MC-66562 (Sub-No. 2314) permanent authority application, now (Sub-No. 2345 (Part 181), and further requested the cancellation of the corresponding Sub-No. 2308 temporary authority, otherwise known as the hub authority.[76/] By order served April 8, 1976, the above Petition and Complaint were consolidated with the various other Complaints filed in this proceeding under lead docket MC-C-8862, Brada Miller Freight System, Inc. v. Rexco, Inc. and REA Express, Inc.

At the outset of the oral hearing, Administrative Law Judge Richard H. Beddow indicated that the Petition of American Trucking Associations, Inc. to cancel the hub temporary authority and to dismiss the corresponding permanent authority application would be considered primarily as a question of law rather than a question of fact. American Trucking Association's, Inc.'s position concerning

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76/ In addition, American Trucking Associations, Inc. filed a Complaint on December 5, 1975, requesting a Cease and Desist Order be issued forthwith against the defendant, REA Express, Inc. and the operations performed by its Rexco division. In addition, the Complaint requested that the Commission take further action as it deemed necessary, including that envisioned by Section 222(b)(1) (49 U.S.C. 322(b)(1)).

the temporary authority and its corresponding permanent authority application has been and continues to be that the defendant, REA Express, Inc. has, of its own volition, chosen not to prosecute these applications at any time prior to this date. We would suggest that REA's intention to now proceed with the prosecution of this application has nothing to do with the public interest, but is rather predicated on a belief that this unprosecuted application is itself a valuable article of commerce.

Initially, it should be recognized that the hub authority, which originally was granted by Commission order served June 5, 1968, has been outstanding in excess of eight years. In addition, as specifically noted in the Petition filed December 1, 1975, by the ATA, REA in a subsequent proceeding before the Commission repudiated the 2308 TA as being unworkable and not suited to the needs of REA's specialized service.[77/] Also, it must be stressed that REA has never seen fit to present evidence in support of a permanent grant of this authority.[78/] Rather, REA itself recognized that this authority was operationally unworkable and specifically sought to obtain an alternate means of providing service.

In 1971 REA filed an application for irregular route authority in No. MC-66562 (Sub-No. 2337 TA), in which it stated that the hub system had proved to be inefficient for REA and inadequate in providing service to the public.[79/]

77/ See Exhibits 3, 4 and 5.

78/ For a more detailed discussion, see infra, pp. 71 to 73.

79/ See Exhibit 3, p. 2.

Specifically, REA adopted a management analysis by A. T. Kearney & Co., Inc. which found the hub authority a totally unworkable vehicle for providing small shipment service to the public.[80/] The Kearney report criticizes the hub authority for a number of reasons. Initially, it characterizes the hub authority as rail oriented and improperly thought out to meet the needs of the motor carrier transport system. Similarly, the Kearney report criticized the fixed nature of the hub and satellite design of the hub temporary authority. The report further stated that the hub authority unnecessarily forced all shipments to move through terminal gateways.

Indeed, REA found the hub authority to be so unsuited to its needs that it specifically advised the Commission that it did not desire to prosecute the related permanent authority application in Sub-No. 2314. In its Petition for Reconsideration, dated June 11, 1971, in the Sub-No. 2337 TA proceeding,[81/] REA advised the Commission at page 13 as follows:

> [F]or REA to pursue to conclusion the permanent application in the Hub case would do the Commission, the public and REA a considerable disservice. For experience demonstrates that the Hub authority precludes REA from providing to the public a modern, efficient and economical express service. The present and future of shippers and REA depends on replacing the Hub and other bits and pieces of motor operating authority it holds with the authority sought herein.

80/ See Exhibit 3, Exhibit A attached thereto.

81/ Exhibit 5.

> Rather than imposing a burden on the Commission, REA's present application will avoid the necessity of a hearing on the Hub authority -- which events have shown cannot do the job -- as well as the numerous pending atomized bits and pieces of regular route authority. For REA will dismiss the Hub proceeding and all other pending applications for motor operating authority upon final approval of the grant of the authority sought. (Emphasis added.)

REA has avoided fo numerous years any obligation of coming before this Commission and proving that there is a need for its service. It has by its statements regarding the impracticability of the hub system invited dismissal and rendered vain any order of the Commission setting it for hearing. The fact that Alltrans Express, U.S.A. has recently entered into a contract to purchase the REA authorities should in no way inhibit the Commission from cancelling the 2308 temporary authority and dismissing the corresponding permanent authority application on the basis that REA failed timely to prosecute the permanent application.

REA's failure to make any attempt to move forward with its application required it to move to dismiss its application. Its statements in support of its irregular route authority in 1971 showed a clear intent not to prosecute its application. Rule 247(f) of the Commission's Special Rules of Practice states, "An applicant who does not intend timely to prosecute its application shall promptly request dismissal thereof."

Furthermore, a review of the record in Docket No. MC-66562 (Sub-No. 2314) (now Sub-No. 2345, Part 181) creates considerable doubt that REA ever intended to prosecure this proceeding. Indeed, nearly 20 months after the grant of temporary authority, REA conceded that it was not then ready to proceed. At a prehearing conference held on the very day, January 12, 1970, that the Commission had designated for the commencement of the evidentiary hearing, REA announced (Tr., p. 72) that it would be ready to present to protestants its operating evidence in support of the application on April 20, 1970. This caused a brief discussion as to REA's inability to move forward at an earlier date which culminated (Tr., pp. 75-76) in the following exchanges:

> Mr. Robbins: I can't see what the problem is in going forward with your operating testimony. All this time you are conducting temporary operations for a substantial period of time. I can't see any reason for more than thirty days.
>
> Exam. Cheseldine: Maybe Mr. Wolff has an excuse for it. I don't know.
>
> Mr. Wolff: I don't have any excuse, Mr. Examiner. I have an explanation.
>
> Exam. Cheseldine: All right. Let's have it.
>
> Mr. Wolff: This is obviously a complex case, with a lengthy application. The operating evidence will have to be prepared in great detail.
>
> Exam. Cheseldine: Has any preparation been made up until now?
>
> Mr. Wolff: Of course it has, Mr. Examiner.

Exam. Cheseldine: Then why weren't you able to describe in more detail what the proposal is.82/

Despite the assurances that it would be prepared to go forward in May of 1970, there is nothing of record to indicate that REA ever took any further positive steps to assure that this matter would be resolved. Thus, the conclusion cannot be avoided that REA, as applicant, deliberately failed to exercise its affirmative obligation to either prosecute or dismiss the application. To permit REA at this stage to suggest that it was not under a duty to prosecute its application and that it is the Commission's obligation to permit REA to continue its temporary operations indefinitely is to countenance a blatant distortion of the Commission's rules. In any case, such a discussion is mooted by the fact, as previously noted, that REA in 1971 in two separate proceedings specifically and unequivocally announced that it had determined that the prosecution of the hub application would not be consistent with the public interest. Finally, the Commission should note that REA, in the instant proceeding, failed to make any attempt to justify its long delay in prosecuting the permanent application or to show cause why the relief requested by Complainants should not be granted.

82/ This cryptic comment refers to an earlier inquiry by Examiner Cheseldine as to the mechanics of the hub sustem. As a review of the transcript (Tr., pp. 25-31) will reveal, REA's spokesman was unable to provide the Commission with anything other than broad generalizations reflecting little substantive knowledge of the proposed operation -- even though REA had been operating under the hub system for nearly 20 months.

Therefore, it is requested that the Commission as a matter of law rule that REA's failure within eight years to prosecute its outstanding permanent authority application is grounds for the dismissal of that application. To refuse to take this step and to permit substitution of any party as applicant will be to reward REA for its dalliance and its utter disregard for the Commission's authority.[83/] This should not be tolerated.

83/ For a more detailed discussion, see Exhibit 1, Argument and Evidence of Complainants, pp. 57-74, filed August 23, 1976.

CONCLUSION

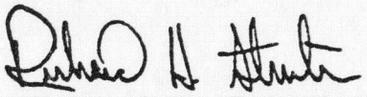
The evidence presented in this proceeding demonstrates that REA's Rexco Division's operations have been conducted in willful or flagrant violation of the Commission's rules and regulations, and in substantive noncompliance with the safety regulations of the Department of Transportation. Nor has REA paid the slightest attention to the terms and limitations of its authorities. Also, it has been shown that Rexco has failed to comply with its published tariffs. Furthermore, there is nothing in the record to suggest that these deviations were accidental or unintentional. Rather, as shown by the testimony of the Rexco sales agents and Commission investigator, the Rexco operation is indelibly marked by a deliberate disregard for the Commission's well-established criteria governing the provision of express service. Again, there is simply no evidence of record that indicates any attempt by Rexco to confine its operations to those authorized by the Commission or Rexco's tariff. Complainants, therefore, ask the Commission to issue an appropriate cease and desist order against the continuation of these patently illegal operations.

Complainants contend that under the precise terms of REA's authorities, these flagrant violations subject the REA temporary authorities to immediate suspension or revocation. These flagrant and repetitive violation leave no room for any finding that Rexco is operationally fit. Under

the Commission's recently enunciated standards for the determination of fitness issues in temporary authority proceedings, Federal Register, Vol. 41, at pp. 43904-43905, dated October 5, 1976, Rexco is "in substantial noncompliance with the safety regulations of the Department of Transportation" and reflects "a history of willful or flagrant violation of the Commission's rules and regulations" and accordingly should be found unfit.

Complainants further contend that REA's deliberate and unexplained failure to prosecute its pending permanent hub authority application requires the Commission summarily to dismiss that application. There is no justification, either legal or equitable, for permitting the hub "temporary" authority to remain outstanding.

Respectfully submitted,



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October 18, 1976

CERTIFICATE OF SERVICE

I, Richard H. Streeter, hereby certify that I have this 18th day of October, 1976 hand-delivered a copy of the foregoing Posthearing Brief of Complainants to all counsel of record in the Washington, D. C. area.

In addition, I have served all counsel located outside the Washington, D. C. area by Federal Express.

Richard H. Streeter

Washington, D. C.
October 18, 1976

APPENDIX A

LIST OF WITNESSES

	DIRECT	CROSS	REDIRECT	RECROSS
ALLISH, RICHARD	905	916	987	
BELFORD, ARTHUR L.	1162	1172	1225	
BROWN, STANLEY	390	396		
BUSSOLATI, LOUIS P., JR.	1896	1898 1994 2094	2226	2258
CAMPBELL, MARY ANN	234	236	276	
CARRETTA, JOSEPH	1650	1660		
COATES, WILLIAM	528	530		
CRENSHAW	1227	1232		
DUJARDIN, NEIL	751	785		
FRANCO, ROBERT J.	567	607 671		
HOLLENBACH, ROBERT	1055	1061		
HOWARD, L. R.	1263	1274		
HUNT, J. B.	156	166		
JOHNS, WILLIAM E.	1417 1483	1435 1489 1566 1697 1852		
JOYNER, REX	1121	1131		
MIANO, THOMAS	2315	2336		
MILLER, WILLIAM	40	42	122 131	127
NESTOR, JAMES B.	994	1012		
PATTERSON, H. L.	846	850		
POHLAD, HARRY	663			

	DIRECT	CROSS	REDIRECT	RECROSS
SANDS, JOHN	347	348		
STERKEN, DONALD	666			
STEWART, ROY H.	277	283		
SUMNER, JAY R.	2397	2399	2434	
ZELL, MICHAEL	668 1234	1241		

TITLE PAGE

REA EXPRESS

WAYBILLING GUIDE

TITLE PAGE

ISSUED March 20, 1964

Issued by L.R. BURKE, Director, Pricing, Railway Express Agency, Inc., 219 E. 42nd St. New York N.Y., 10017.

This Guide is issued in sections for each of the forty eight (48) contiguous states. The purpose of this publication is to assist REA personnel in routing shipments to points not published in the Joint Directory of Express Offices, I.C.C. A-3, or the Directory of Offices and Communities Served by REA Express.

Places listed under column headed "Name of Place" are not REA Express offices; REA does not maintain representation at, nor provide pick-up or delivery service to addresses located in these communities. Under column headed "Waybill Office" is shown the REA Express office to which traffic will be routed, when addressed to the place named in the preceding column.

The Waybill Office designated is not necessarily the nearest REA Express office, to the point named in the preceding column. In many instances better service can be provided from a more distant office due to the availability of more frequent service via rail or motor truck into and out of the designated Waybill Office.

Notice of arrival of shipment will be given the consignee at once, by telephone or U.S. Mail, at address given on shipment, by the Waybill Office designated in Express Waybilling Guide. Telephone notification will be confirmed by U.S. Mail. Such shipments will be classified as "On Hand" shipments and will be held at named Waybill Office, awaiting pick-up by consignee.

Following the expiration of the "free time" allotted, the shipment will become subject to storage rules, charges and all other provisions published in the Official Express Classification 36 governing "On Hand" shipments.

Printed in U.S.A. (15,000)

WEST VIRGINIA WAYBILLING GUIDE

NAME OF PLACE	WAYBILL TO
Edwight	Whitesville
Eunice	Whitesville
Egeria	Beckley
Egria (Raleigh Co.)	Beckley
Eglon	Terra Alta
Eight	Welch
Eight Mile	Charleston
Elana (Clay Co.)	Clay
Elbert	Welch
Eleanor	Charleston
Elgeria	Beckley
Elizabeth	Parkersburg
Elk (Kanawha Co.)	Charleston
Elk Garden	Keyser
Elkhorn	North Fork
Elkhurst	Clay
Elk Lick	Parsons
Elkridge (Fayette Co.)	Montgomery
Elkview	Charleston
Elkwater	Elkins
Ellamore	Buckhannon
Ellenboro	Pennsboro
Ellison	Hinton
Elmira (Clay Co.)	Clay
Elmore	Mullens
Elmwood (Mason Co.)	Gallipolis, Ohio
Elmwood (Wayne Co.)	Huntington
Elton	Hinton
Elverton	Rainelle
Emmett	Man
Emmons	Cabin Creek Jct.
Emoryville	Keyser
Endicott	Fairmont
Engle	Harpers Ferry
English	Welch
Ennis	North Fork
Enoch (Clay Co.)	Clay
Enon	Summersville
Enterprise	Clarksburg
Erbacon	Cowen
Erie	Clarksburg
Erin	Ieeger
Erwin (Preston Co.)	Rowlesburg
Eskdale	Cabin Creek Jct.
Etam	Rowlesburg
Ethel	Logan
Etowah	Charleston
Euclid (Clay Co.)	Clay
Eunice	Whitesville
Eureka (Pleasants Co.)	St. Marys
Eva	Pennsboro
Evans	Ripley
Evansville	Tunnelton
Evelyn	Rainelle
Evenwood	Elkins
Everettville	Morgantown
Everson	Fairmont
Excelsior	Welch
Exchange	Sutton

F

Fabius	Moorefield
Fairdale	Beckley
Fairplain	Ripley
Fairview (Marion Co.)	Fairmont
Faith	Martinsburg
Falling Rock	Clendennin
Falling Waters	Martinsburg
Falls Mill	Sutton
Falls View	Alloy
Fanco	Man
Far	Pine Grove
Farmington	Fairmont
Farnum (Harrison Co.)	Clarksburg
Faulkner (Randolph Co.)	Elkins
Fayette	Oak Hill
Fayetteville	Oak Hill
Federal (Clay Co.)	Clay
Felix	Permit
Felton (Barbour Co.)	Philippi
Fennimore	Danville
Fenwick	Richwood
Ferguson (Wayne Co.)	Huntington
Ferndale (Boone Co.)	Whitesville
Ferrell	St. Albans
Ferrelsburg	Logan
Ferry Road	Steubenville, Ohio
Filbert	Welch
Fink	Weston
Finlow	Thurmond
Fireco	Beckley
Fire Creek	Thurmond
Fisher (Hardy Co.)	Moorefield
Fitzpatrick	Beckley
Five Block	Danville
Five Mile (Kanawha Co.)	Charleston
Flats	Moorefield
Flat Top	Beckley
Flatwoods	Sutton
Flemington	Clarksburg
Fletcher (Jackson Co.)	Ripley
Flint (Randolph Co.)	Elkins
Floe	Clay
Floer	Clay
Flower (Braxton Co.)	Burnsville
Foch	Danville
Fonzo	Pennsboro
Forest Hill	Hinton
Forks of Capon	Cumberland, Md.
Forks of Coal	Charleston
Forman	Petersburg
Fort Ashby (Mineral Co.)	Cumberland, Md.
Fort Branch	Logan
Fort Gay	Louisa, Ky.
Fort Run	Moorefield
Fort Seybert	Moorefield
Fort Spring	Ronceverte
Four States	Worthington
Fowlerknob	Oak Hill
Frame	Charleston
Frametown	Gassaway
Francis (Raleigh Co.)	Mullens
Frank (Putnam Co.)	Durbin
Frank (Pocahontas Co.)	Durbin
Franklin (Pendleton Co.)	Petersburg
Frazier (Greenbrier Co.)	Ronceverte
Fraziers (Bottom) (Putnam Co.)	Charleston
Fred	Whitesville
Freed	Spencer
Freeman	Bluefield
Freemansburg	Weston
Freeze Fork	Logan
French Creek (Upshur Co.)	Buckhannon
Frenchton	Buckhannon
Friendly	Sistersville
Frozen	Spencer
Fry (Kanawha Co.)	Charleston
Fry (Lincoln Co.)	Logan

G

Gad	Alloy
Gage	Belington
Gaines	Buckhannon
Gales	Ronceverte
Gallagher (Kanawha Co.)	Montgomery
Gallaway	Clarksburg
Gallipolis Ferry	Gallipolis, Ohio
Gamoca	Alloy
Gandeeville	Spencer
Ganotown	Martinsburg
Gap Mills	Ronceverte
Garland	Iaeger
Garnet	Charleston
Garnette	Man
Garretts Bend	St. Albans
Garten	Oak Hill
Garwood	Mullens
Gary	Welch
Gary Owen	Sistersville
Gaston	Weston
Gatewood	Oak Hill
Gauley	Alloy
Gauley Bridge	Alloy
Gauley Mills	Cowen
Gay (Jackson Co.)	Ripley
Gem	Burnsville
Genoa	Huntington
George Creek	Logan
Georgetown	Morgantown
Gerradstown	Martinsburg
Ghent	Beckley
Giatto	Bluefield
Gilbert (Mingo Co.)	Man
Gilboa (Nicholas Co.)	Alloy
Giles	Cabin Creek Jct.
Gill	Barboursville
Gillespie	Sutton
Gilliam	North Fork
Gilmer	Burnsville
Gip	Gassaway
Girta	Parkersburg
Given (Jackson Co.)	Ripley
Glace	White Sulphur Springs
Glade	Hinton
Glade Farms	Morgantown
Gladesville	Tunnelton
Gladwin	Parsons
Glasgow	Charleston
Glady	Elkins
Gleason	Keyser
Glebe	Romney
Glen Alum	Logan
Glen Daniel	Beckley
Glen Easton	Wheeling
Glendon	Gassaway
Glen Falls	Clarksburg
Glen Ferris	Alloy
Glenfork	Mullens
Glengary	Martinsburg
Glenhays	Louisa, Ky.
Glen Hederick	Beckley
Glenhuddy	Montgomery
Glen Jean	Oak Hill
Glen Morgan	Beckley
Glen Morris	Mullens
Glenray	Alderson
Glen Rogers	Mullens
Glen White	Beckley

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NEW YORK WAYBILLING GUIDE

NAME OF PLACE	WAYBILL TO
Hodgeville	Buffalo
Hoffmans	Amsterdam
Hoffman Station	Buffalo
Hoffmeister	Utica
Hogansburg	Potsdam
Holcomb	Geneva
Holland (Erie Co.)	Buffalo
Holland Patent	Utica
Hollowville	Hudson
Hollywood	Saranac Lake
Holmes (Dutchess Co.)	Danbury, Conn.
Holmesville (Chenango Co.)	Norwich
Honeoye Junction	Rochester
Honest Hill	Batavia
Hook	Glens Falls
Hooper	Binghamton
Hoopers Valley	Elmira
Hope (Falls)	Gloversville
Hopewell (Ontario Co.)	Geneva
Hopewell Jct	Mid-Hudson
Hopkinton	Potsdam
Horicon (Warren Co.)	Chestertown
Hornby	Elmira
Horton	Roscoe
Horton Estates	Danbury, Conn.
Hortonville	Callicoon
Houghton	Franklinville
Houseville	Lowville
Howard (Steuben Co.)	Hornell
Howells	Middletown
Howes Cave	Cobleskill
Hoyts	Springville
Hubbardsville	Utica
Huguenot (Orange Co.)	Middletown
Hulberton	Batavia
Huletts	Glens Falls
Huletts Landing	Glens Falls
Hulls Mills	Mid-Hudson
Hume	Franklinville
Humphreysville	Hudson
Hunt	Perry
Hunter Lake (Sullivan Co.)	Monticello
Hunters Land	Cobleskill
Hunts Corners	Whitney Point
Hurleyville	Monticello
Huron	Geneva
Hurricane	Saranac Lake
Huston	Perry
Hyde Park (Otsego Co.)	Oneonta
Hyndsville	Cobleskill

I

Idlewild (Orange Co.)	Mid-Hudson
Idlewood	Hamburg
Independence	Hornell
Index	Oneonta
Indian Castle	Utica
Indian Falls	Buffalo
Indian Lake	North Creek
Indian River	Lowville
Inghams (Mills)	Utica
Ingleside	Hornell
Ingraham	Plattsburgh
Interlaken	Ithaca
Inverness	Batavia
Iona Island	Suffern-Nyack
Ionia	Geneva
Ira (Station)	Syracuse
Ireland Corners	Mid-Hudson
Irona	Rouses Point
Ironville	Port Henry
Iron Works	Troy
Iroquois	North Collins
Irving	Angola
Ischua	Franklinville
Italy	Hornell
Italy Hill	Elmira
Itaska	Whitney Point
Ivory	Jamestown

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Jackson	Ithaca
Jacksonburgh	Utica
Jackson Corners	Mid-Hudson
Jacksonville	Ithaca
Jamison Road	Buffalo
Jasper	Hornell
Java Center	Arcade
Java Village	Arcade
Jay	Au Sable Forks
Jeddo	Batavia
Jefferson	Stamford
Jefferson Valley	Ardsley
Jeffersonville	Callicoon
Jenkintown	Mid-Hudson
Jenksville	Newark Valley
Jewell	Camden
Jewett	
May 15 to Sept. 15	Tannersville
Sept. 16 to May 14	Catskill
Jewettville	Orchard Park
Joeindian	Potsdam
Johnsburg (Warren Co.)	Chestertown
Johnsonburg (Wyoming Co.)	Batavia
Johnson	Middletown
Johnson Creek	Batavia
Johnsonville	North Bennington, Vt.
Jonesville	Troy
Jordan	Syracuse
Jordans (Steuben Co.)	Elmira
Jordanville	Richfield Springs
Joshua	Ithaca
Joy	Geneva
Junius Station (Ontario Co.)	Geneva
Junius (Station) (Seneca Co.)	Geneva

K

Kaaterskill Junction	
May 15 to Sept. 15	Tannersville
Sept. 16 to May 14	Mid-Hudson
Kampe	Middletown
Kanohwahke Lake	Tuxedo
Kanona	Elmira
Karner	Troy
Kasoag	Camden
Kashong	Geneva
Kast Bridge	Utica
Katsbaan	Mid-Hudson
Kattskill Bay	Glens Falls
Kauneonga Lake	Monticello
Kayuta	Utica
Kecks Center	Gloversville
Keene (Valley) (Essex Co.)	Au Sable Forks
Keenes (St. Lawrence Co.)	Gouverneur
Kerrys	Hancock
Kellogg	Orchard Park
Kelloggsville	Ithaca
Kelsey	Hancock
Kendaia	Geneva
Kendall	Batavia
Kendall Mills	Batavia
Kennedy	Jamestown
Kenney (Allegany Co.)	Perry
Kenoza Lake	Callicoon
Kent (Orleans Co.)	Batavia
Kent Cliffs	Danbury, Conn.
Kenyonville	Batavia
Kerhonkson	Mid-Hudson
Ketchum	Norwich
Ketchums Corners	Troy
Ketchumville	Newark Valley or Whitney Point
Keuka	Hammondsport
Kiamesha Lake	Monticello
Kiantone	Jamestown
Kidders	Ithaca
Kildare	Saranac Lake
Killawog	Whitney Point
Kill Buck	Olean
Kings	Glens Falls
Kings Ferry	Syracuse
Kingston Point	Mid-Hudson
Kinney Four Corners	Syracuse
Kipps	Middletown
Kirkville (Junction)	Syracuse
Kirschnerville	Lowville
Kiskatom	Catskill
Knapp Creek	Olean
Knapps	Potsdam
Knowlesville	Batavia
Knox	Altamont
Knoxboro	Utica
Kortright	Stamford
Kripplebush	Mid-Hudson
Krumville	Mid-Hudson
Kuckville	Batavia
Kyserike	Mid-Hudson

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Lackawack	Monticello
Lacona	Pulaski
LaFargeville	Watertown
Lafayette	Ithaca
Lafayetteville	Mid-Hudson
Lagrange (Wyoming Co.)	Perry
Lagrangeville	Mid-Hudson
Laidlaw	Franklinville
Lairdsville	Utica
Lake (Orange Co.)	Middletown
Lake Bluff	Geneva
Lake Bonaparte	Gouverneur
Lake Clear	Saranac Lake
Lake Clear Jct	Saranac Lake
Lake Colby	Saranac Lake
Lake Hill	Mid-Hudson
Lake Huntington	Callicoon
Lakeland (Onondaga Co.)	Syracuse
Lake Lincolndale	Danbury, Conn.
Lake Mahopac Station	Ardsley
Lake Minnewaska	Mid-Hudson
Lake Mohonk	Mid-Hudson
Lake Oscawana	Ardsley
Lake Peekskill	Ardsley
Lakeport	Syracuse
Lake Ridge	Syracuse
Lake Shenorock	Danbury, Conn.

TEXAS WAYBILLING GUIDE

NAME OF PLACE	WAYBILL TO
Nash (Potter Co.)	Amarillo
Nat	Nacogdoches
Natalia	Devine
Natawa	San Antonio
Nathan	Trinity
Navarro	Corsicana
Navidad	Edna
Navo	Dallas
Naylor	Clarendon
Nazareth	Dimmitt
Nazro	Mexia
Neale (McLennan Co.)	Waco
Neals (Upshur Co.)	Big Sandy
Nebo	Tyler
Necessity	Ranger
Nechanitz	Giddings
Neches	Palestine
Neches Junction	Nederland
Nedra	Wharton
Needmore (Delta Co.)	Paris
Needmore (Nacogdoches Co.)	Nacogdoches
Neely	San Augustine
Neff (Trinity Co.)	Lufkin
Negley	Clarksville
Neinda	Hamlin
Nela	Hillsboro
Nelleva Junction	Navasota
Nelms	Corrigan
Nelson	Georgetown
Nelsonville	Bellville
Nelta	Sulphur Springs
Nemo	Cleburne or Granbury
Neola	Greenville
Neri	Granbury
Nesbitt	Franklin
Nestor	Cameron
Nettie	Livingston
Neut	Bonham
Nevada (Collin Co.)	Rockwall
Nevilles Spur	Gonzales
Newark	Fort Worth
New Baden	Franklin
New Berlin	San Antonio
New Brimingham	Rusk
Newburg	Comanche
Newby	Buffalo
New California	Crystal City
New Camp	Nacogdoches
New Castle	Graham
New Fountain	Hondo
New Gulf	Wharton
Newharp	Decatur
New Home	Slaton or Tahoka
New Hope (Dallas Co.)	Dallas
New Hope (Jones Co.)	Stamford
New Iatan	Colorado City
Newlin	Memphis
Newline	Jefferson
New London	Overton
Newman (El Paso Co.)	El Paso
Newport	Bowie
New Salem	Rusk
Newsome	Pittsburg
New Sweden	Austin
New Ulm	Columbus
Newton	Jasper
New Waverly	Huntsville
Newville	Center
New Willard	Livingston
New York	Athens
Neyland	Greenville
Neylandville	Greenville
Nicholas	Bryan-College Station
Nicholls (Corvell Co.)	Killeen
Nichols (Kendall Co.)	Kerrville
Nicholson	Bonham
Nickel	Omaha
Nickleberry	Omaha
Niederwald	Kyle
Nigton	Lufkin
Nile	Thorndale
Niles City	Fort Worth
Nimrod (Eastland Co.)	Cisco
Nineveh	Buffalo
Nivac	Nacogdoches
Nix (Gregg Co.)	Longview
Noack	Taylor
Nobility	Greenville
Noble (Lamar Co.)	Bonham
Noble (Parker Co.)	Weatherford
Nockenut	San Saba
Noel	Marshall
Nogalitos	San Antonio
Nogalus	Lufkin
Nolan	Sweetwater
Nolanville	Killeen
Noleda	Alice
Nolte	Seguin
Nona (Hardin Co.)	Kountze
Nona (Tarrant Co.)	Fort Worth
Noodle	Merkel
Noolette	Skellytown
Noonan	Lacoste
Noonday	Tyler
Nopal (Dewitt Co.)	Yorktown
Nopal (Presidio Co.)	Marfa
Nora	Del Rio
Nordheim	Yorktown
Norfolk	Overton
Norias	Kingsville
Noris	Raymondville
Normangee	Bryan-College Station
Normanna	Beeville
Normanvale	Shepherd
Normoyle	San Antonio
Norse	Clifton
North Camp Hood	Gatesville
North Cowden	Odessa
Northend	Brenham
North Ennis	Ennis
Northfield	Childress
Northfork	McLean
North Fort Worth	Fort Worth
North Georgetown	Georgetown
North Houston	Houston
North Jefferson	Jefferson
North Loop	San Antonio
North Platt	Lufkin
North Pleasanton	Pleasanton
North Roby	Rotan
Northrup	Giddings
North Rusk	Rusk
North Side	Amarillo
North Uvalde	Uvalde
Northwood	Navasota
North Zulch	Bryan-College Station
Norton	San Angelo
Norwall	Rusk
Norwood (Dallas Co.)	Falfurrias
Norwood (McLennan Co.)	Waco
Notla	Canadian
Notrees	Odessa
Nottawa	East Bernard
Novobrad	Flatonia
Noxville	Kerrville
Noyl	Chillicothe
Nubia	Merkel
Nudavy	Sealy
Nueces	Corpus Christi
Nuecestown	Corpus Christi
Nugent	Abilene
Nursery	Victoria
Nussbaumer	Dallas
Nye Spur	Laredo

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NAME OF PLACE	WAYBILL TO
Oak	Waxahachie
Oakalla	Copperas Cove
Oak Cliff	Dallas
Oakdale	Cleveland
Oak Forest	Gonzales
Oak Grove (Bowie Co.)	De Kalb
Oakgrove (Tarrant Co.)	Fort Worth
Oak Hill	Austin
Oakland (Colorado Co.)	Weimar
Oakland (Tarrant Co.)	Fort Worth
Oakley	Baytown
Oaks	La Porte
Oakville	George West
Oakwood	Palestine
Obi	Uvalde
Oblate	McAllen
O'Brian	Knox City
Oby	Pittsburg
Ochiltree	Perryton
Ocker	Temple
O'Daniel	Seguin
Odds	Marlin
Odem Station	Corpus Christi
Odessa Stock Pens	Odessa
Odey	Angleton
Odlaw	Uvalde
Oenaville	Temple
O'Farrell	Atlanta
Offat	Galveston
Ogden	Paducah
Oglesby	McGregor
Ohio (Hamilton Co.)	Hamilton
Oil City	Stinnett
Oildom	Wichita Falls
Oilery	Ranger
Oilfield	Luling
Oilla	Orange
Oilsby	Dickinson
Oil Springs	Nacogdoches
Oilton	Laredo
Oklaunion	Vernon
Okra	Cisco
Ola	Kaufman
Olcott	Genoa
Olden	Eastland
Oldenburg	La Grange
Old Glory	Rule
Old Ocean	Sweeney
Old Round Rock	Round Rock
Old Switch	Ennis

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